BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **23.06.2021**
CORAM
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
W.P(MD)No.8238 of 2021
and
WMP(MD)No.6225 of 2021

M/s.Yamuna Impex, a proprietary firm,
Represented by its,
Authorized Signatory Shri T.Rajasekaran
2/1032/2, Kanna Nagar,
Naranapuram Road,
Sivakasi, Tamil Nadu - 626 189. ... Petitioner

Vs.

1.The Commissioner of Customs,
Customs House, New Harbor Estate,
Tuticorin - 628 004.

2.The Assistant Commissioner of Customs,
(Special Intelligence and Investigation Branch - SIIB),
O/o. Commissioner of Customs,
Customs House, New Harbour Estate, Tuticorin - 628 004.

3. The Assistant Commissioner of Customs
(Group - 2), O/o. Commissioner of Customs,
Customs House, New Harbour Estate,
Tuticorin - 628 004. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, to direct the respondents to cause release of the goods imported under Bill of Entry No.3192548, dated 18.03.2021 namely 'coated paper sheets' without any further delay or procrastination on their part.

For Petitioner : Mr. B.Satish Sundar
For Respondents : Mr. R.Aravinthan
Standing Counsel

O R D E R

This Writ Petition has been filed praying for issuance of a Writ of Mandamus, to direct the respondent to consider the representation of the petitioner, dated 26.12.2020.

2. The case of the petitioner is that the petitioner is a proprietary Firm, involved in the business of import and local sale of all grades of paper classifiable under Chapter 48 of the EXIM Policy of 2017-22 and it has been favour with an IE Code by the

office of the Joint Director, Director General of Foreign Trade, Ministry of Commerce and Industry, Government of India, Madurai. The petitioner is also duty registered with the Goods and Service Tax Authorities and holds a Registration No.33AVTPP2198LIZR and it is valid as on date. The petitioner's proprietor, is an Income Tax Assesses and holding a PAN with No.AVTPP2198l.

3. The petitioner, in the course of its business, placed orders with M/s.Pace 2000 Trading Ltd., United Kingdom, for supply of 'coated paper sheets' of different GSM and different dimensions. The said entity raised a commercial invoice dated 19.02.2021 for supply of 82 pallets of the said material totally weighing 45.048 MTs., at the rate of USD 750/ MT., totalling to USD 25,677.36. The petitioner effected payments towards the said supply and the goods in question were shipped on 25.02.2021 in two containers, by the supplier to the petitioner via Rotterdam to Tuticorin Sea Port.

4. The goods arrived at Tuticorin Sea Port in the second week of March 2021 and the petitioner filed a Bill of Entry No.3192548, dated 18.03.2021, for clearance of the goods and the goods in question were duly self-assessed and the petitioner also remitted duty to the tune of Rs.5,94,477/-, under Challan No.2034270981. Even though the assessment was completed, the respondents seems to have entertained certain doubts with respect to the nature of the consignment and therefore, reference was made to the Office of the 2nd Respondent, for causing verification. However, when the goods were about to be physically cleared, by grant of out of charge order, the office of the 2nd respondent intervened and caused seizure of the said goods under a seizure memo, dated 25.03.2021, on the ground that the goods imported appears to fall under CTH 4810 1920 and not under 4811 9099 and there is a prohibition imposed under DGFT Notification No.45/2015-2020, dated 31.01.2020 for import of stock lot of 'Coated Paper' falling under CTH 4810. The goods in question were thereafter de-stuffed and put into domestic containers and handed over to the custodian of cargo M/s.CWC, Nhava Shewa, CFS, Tuticorin, for safe custody.

5. The learned counsel appearing for the petitioner would submit that on seizure of the goods, the petitioner caused a representation stating that the consignment imported are not stock lot by any interpretation. The coated paper sheets of different GSM cannot be considered as a different variety of paper. The goods under import are not stock lot, as per para 2(c) of the DGFT Trade Notice No.8, dated 4.5.2020 and the prohibition introduced by the DGFT under Notification No.45/2015-2020, dated 31.01.2020 will not have application. Since the demand of the petitioner for release of the goods not having been met, the petitioner is constrained to come up by way of the present Writ Petition.

6. The learned standing counsel appearing for the respondents would submit that on examination of cargo based information

available in the import documents such as, Bill of Entry, Invoice and Detailed Packing Lists submitted by the importer, it was found that M/ys.Yamuna Impex have imported different GSM and sizes of coated paper (art paper) falling under different descriptions within CH 4810 but declared the same under CTI 48119099 to circumvent the prohibition imposed under DGFT Notification No.45/2015-20, dated 31.01.2020 on import of stock lot of coated paper falling under CTI 4810. Hence, the entire cargo contained in 48 Pallets and 34 pallets of coated paper sheets in two containers No.DFSU6953683 & MEDU7304688 respectively covered under the Bill of Entry No.3192548, dated 18.03.2021 was seized under Mahazar dated 25.03.2021 on the reasonable belief that the importer had imported "Stock Lot" of "Coated Paper" falling under CTI 4810 and mis-declared the same under CTI 4811 to circumvent the prohibition imposed. The explanatory note of CTH 4810 described as "paper and paper board, coated on one or both sides with kaolin (China Clay) or other organic substances, with or without a binder, and with no other coating, whether or not surface-coloured, surface-decorated or printed, in rolls or rectangular sheets, of any size".

7. As per Para 2(c) of Trade Notice No.08/2020-2021, dated 04.05.2020 isued by DGFT "if the whole imported paper consignment is without description of each category of paper it is a Stock Lot" which is prohibited as per DGFT Notification No.45/2015-2021, dated 31.01.2020. In the subject consignment, M/s.Yamuna Impex, Sivakasi, have imported stock lot of coated apper and declared the same under CTI 48119099 - coated paper - other for avoiding the prohibition imposed by DGFT Notification. Further, on examination of the cargo imported vide Bill of Entry No.3192548, it was found that the containers contain stock lot coated paper classifiable under different descriptions falling under RITC 4810 and also different GSMs and sizes which is prohibited under Notification No.45/2015-20 issued by DGFT but the importer had declared the same under RITC 48119099 - coated paper - other in Bill of Entry to circumvent the prohibition imposed by DGFT.

8. From the foregoing, it is evidence that the form, size, GSM and any other special characteristic plays a major role in classification of the paper. The detailed Packing List for the Bill of Entry No.3192548, dated 18.03.2021, forwarded by the supplier suggested that the imported cargo contains different descriptions of Art paper falling under 481014 and 481019 depending upon size. It is evident from the seizure that the importer had classified the Art paper of different descriptions falling under CTI 4810, which is definitely "Stock Lot" of paper, as per DGFT Notification No.45/2015-20 under 4811 to circumvent the prohibition imposed. Hence, it is submitted that the seizure of the cargo for further investigation is legal, proper and maintainable. Hence, the learned counsel for the respondents prays for dismissal of the writ petition.

9. I have heard the learned counsels appearing on either side and perused the materials available on record.

10. It is brought to the notice of this Court by the learned counsels appearing on either side that a Division Bench of this Court, in similar circumstances, in W.A(MD)Nos.1176 & 1177 of 2021, considered the issue, expunging the findings of the order passed by the learned Single Bench of this Court in W.P(MD)Nos.5161 & 5528 of 2021, dated 26.03.2021, and has directed the respondents to release the goods, by granting liberty to the parties to adjudicate the matter.

11. In the light of the above submissions made by the learned counsels appearing on either side and by taking note of the decision rendered by the Division Bench of this Court in similar circumstances, this Court is inclined to allow this writ petition. Accordingly, this Writ Petition is allowed with a direction to the respondents to release the goods forthwith to the petitioner, by granting liberty to the parties, to adjudicate the matter in the manner known to law. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021
Sub Assistant Registrar(CS)

MPK

<u>Note :</u> In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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(Special Intelligence and Investigation Branch - SIIB),
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(Group - 2), O/o. Commissioner of Customs,
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+2 CC to M/s.M.RAMASAMY, Advocate (SR-19987[F] dated 23/06/2021)

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KB(24.06.2021) 5P 6C