BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **22.06.2021**

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A.(MD)No.1156 of 2021
in
W.P(MD).No.9516 of 2021
and
W.M.P(MD).No.7249 of 2021

W.A.(MD)No.1156 of 2021

M/s.Al Qahir International,
Rep. by its Managing Partner,
Shri Shihad
13/489, A, Kumara Nellur,
Thrissur District, Kerala. ... Appellant/Petitioner/Petitioner

Vs.

1. The Tuticorin Customs House,
Rep. by its Superintendent,
Tuticorin Port.

2. The Deputy Director,
Directorate of Revenue Intelligence,
Tuticorin - 628 001. ... Respondents/Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order of this Court made in W.M.P(MD).No.7249 of 2021 in W.P.(MD) No.9516 of 2021, dated 27.05.2021.

W.P(MD).No.9516 of 2021

M/s.Al Qahir International,
Rep. by its Managing Partner,
Shri Shihad
13/489, A, Kumara Nellur,
Thrissur District, Kerala. ... Petitioner

Vs.

1. The Tuticorin Customs House,
Rep. by its Superintendent,
Tuticorin Port.

2. The Deputy Director,
Directorate of Revenue Intelligence,
Tuticorin - 628 001. ... Respondents

Prayer: Petition under Article 226 of the Constitution of India seeking issuance of a writ of Mandamus directing the respondents to relese the petitioner's consignment/goods imported vide Bill of Entry Nos.3655257 dated 21.04.2021, 3649935 dated 21.04.2021, 3649146 dated 21.04.2021, 3718109 dated 26.04.2021, 3746469 dated 28.04.2021, 3656537 dated 21.04.2021, 3655260 dated 21.04.2021 and 3655555 dated 21.04.2021 with the time that may be stipulated by this Court.

Prayer in WMP(MD). 7249/ 2021 :

To grant an Ad Interim Direction directing the respondents to provisionally release the goods imported by the petitioner vide Bill of Entry Nos.3655257 dated 21/04/2021, 3649935 dated 21/04/2021, 3649146 dated 21/04/2021, 3718109 dated 26/04/2021, 3746469 dated 28/04/2021 , 3656537 dated 21/04/2021, 3655260 dated 21/04/2021 and 3655555 dated 21/04/2021 , pending disposal of the above writ petition and thus render justice.

For Appellant and Writ Petitioner	: Mr.Vijay Narayan Senior Counsel for Dr.S.Krishnanandh
For Respondents in W.A and W.P	: Mr.B.Vijay Karthikeyan

COMMON JUDGMENT

[Judgment of the Court was delivered by **T.S.SIVAGNANAM,J.**]

This appeal filed by the writ petitioner is directed against the order dated 27.05.2021 in W.M.P(MD).No.7249 of 2021 in W.P.(MD) No.9516 of 2021. It is an interim direction passed in the writ petition. The appellant being aggrieved by the conditions imposed by the learned Single Bench is before us by way of this Writ Appeal.

2. We have elaborately heard Mr.Vijay Narayan, learned Senior Counsel, assisted by Dr.S.Krishnanandh, learned counsel appearing for the appellant and Mr.B.Vijay Karthikeyan, learned Standing Counsel appearing for the respondents. With consent on either side, we dispose of this Writ Appeal as well as the Writ Petition by this Common judgment and order.

3. The facts of the case, which are necessary for the disposal of this appeal, are noted as follows:

(i) The appellant has imported eight consignments of black pepper from Srilanka. The value declared is more than Rs.500/- (Rupees Five Hundred Only) per kilogram. As per the notification issued, black pepper, if the import price of which is more than Rs.500/ per kilogram, is freely importable.

(ii) The appellant has paid the customs duty computed at the rate of Rs.500/- per kilogram. The Directorate of Revenue Intelligence (in short "DRI"), Tuticorin has seized the goods under mahazar dated 19.05.2021, on the alleged ground that the purchase price of black pepper in Srilanka is far lesser than Rs.500/-. The invoices were inflated by the appellant only for the purpose of getting over the prohibition as per the amended DGFT notification No.21/2015-2020, dated 25.07.2018. The goods are now lying in the Tuticorin Port.

(iii) The petitioner made a request to the DRI, Tuticorin, by representation dated 13.05.2021, requesting for release of the goods. Within three days thereafter, the writ petition was filed praying for issuance of a Writ of Mandamus to release the goods. The learned Single Bench, while keeping the writ petition pending, has issued certain directions.

4. The learned Senior Counsel appearing for the appellant submitted that though a reading of the impugned order passed by the learned Single Bench appears to give an impression that the appellant has domain over the goods, in effect, the appellant has got no domain over the goods and the conditions imposed are unworkable and he has not been permitted to clear the goods. Since the prayer sought for is for a blanket relief, the DRI has filed counter affidavit in the writ petition, as to what is the material gathered during investigation up to this stage and justified their seizure by mahazar dated 19.05.2021.

5. In our considered view, there is no necessity for this Court to go into the aspect with regard to the investigation, which is being carried on by DRI, Tuticorin, because the issue involved in the writ petition is whether the goods imported by the appellant can be released by the Customs Authority, either by way of a release in total or by way of a provisional release. Since the DRI has taken up the matter for investigation, the appellant seeks for provisional release of the cargo, which has been imported by them, seized by the DRI and presently lying in the Tuticorin Port. If such is the prayer sought for by the appellant, then reasonable time should be granted to the Competent Authority to take a decision on such an application or representation being filed for provisional release of the cargo.

6. We find that there is no formal request made to the Competent Authority, who is stated to be the Commissioner of Customs, Tuticorin, praying for provisional release of the cargo. Therefore, in our considered view, the prayer as couched in the writ petition is premature and no Writ of Mandamus could have been issued at the present stage, more particularly, when the Authority is yet to take a decision on the matter and more importantly, when there is no specific request made by the appellant for grant of provisional release before the Commissioner of Customs, Tuticorin.

7. The learned Senior Counsel appearing for the appellant and the learned Standing Counsel appearing for the Revenue made elaborate submissions.

8. On the side of the Revenue, reliance was made on the recent decision of the Honourable Supreme Court in ***Union of India & Ors., vs. M/s.Raj Grow Impex LLP & Ors.***, in Civil Appeal Nos.2217-2218 of 2021, dated 17.06.2021.

9. The learned Senior Counsel appearing for the appellant would submit that the said decision is distinguishable and it is based upon a conduct of the importer, who knowingly misrepresented and obtained an interim order from the High Court of Rajasthan and which was dealt with by the Honourable Supreme Court in the case of ***Union of India & Ors., vs. Agricas LLP & Ors.,.***

10. In our considered view, it will be too early for us to examine the aspects now placed before us by the appellant as well as the Department, because, there is a clear dichotomy between the request made by the appellant before us for provisional release and the investigation, which is now being conducted by the DRI. The appellant cannot mix up both, as both are independent to each other.

11. In any event, if a request is made by the appellant for provisional release before the Competent Authority, the Competent Authority is required to take a decision in the matter. As we pointed out earlier, there is no formal request made by the appellant for provisional release of the cargo and the representation dated 13.05.2021 given to the DRI is for release of the cargo and cannot be construed as an application for provisional release.

12. Therefore, we are of the considered view that the prayer sought for in the writ petition is not maintainable or rather has to be taken to be premature, considering the facts of the case, since the Revenue states that the import of black pepper into India, which is valued below Rs.500/- is prohibited taking into consideration the welfare of the agriculturists and it is alleged by the DRI that the imports had been effected by the appellant by inflating the invoice value. We do not propose to render any opinion on these issues as we are convinced that the appellant should approach the Commissioner of Customs, Tuticorin, with a proper request for provisional release, which the Competent Authority will consider in accordance with law.

13. We make it clear that the direction which we propose to issue in this writ appeal will in no manner have any impact on the investigation done by the DRI.

14. The learned Counsel appearing for the appellant submitted that identical import was effected through the Chennai Port, which was also investigated by the DRI, Bengaluru, who have given No Objection Certificate for clearance of the goods. If that is so, it will be well open to the appellant to place copy of such an order for consideration of the Commissioner of Customs, Tuticorin, while

filing the application for provisional release.

15. For the above reasons, the Writ Appeal is allowed and the interim direction issued in the writ petition is set aside. Consequently, the writ petition stands disposed of by directing the appellant to file a proper application for grant of provisional release of the cargo along with their submissions as well as the documents which they propose to rely upon and the Commissioner of Customs, Tuticorin, shall fix the date for personal hearing, preferably, through video conferencing, since the appellant is stated to be a permanent resident of State of Kerala. After the conclusion of the personal hearing, the Commissioner of Customs, Tuticorin, shall pass orders on the application of provisional release within a period of ten days thereafter. No costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pkn

Note: *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:

1. The Superintendent,
   Tuticorin Customs House,
   Tuticorin Port.

2. The Deputy Director,
   Directorate of Revenue Intelligence,
   Tuticorin - 628 001.

+1 CC to M/s.B.VIJAYKARTHIKEYAN, Advocate (SR-19865[F] dated 22/06/2021)

W.A.(MD)No.1156 of 2021

22.06.2021

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