BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **21.06.2021**

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A.(MD)Nos.1176 and 1177 of 2021
and
CMP(MD).Nos.5015 and 5016 of 2021

1. The Commissioner of Customs,
   Customs House,
   New Harbour 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.

... Appellants/Respondents 1 to 3
(in both Writ Appeals)

Vs.

M/s.Jayasakthi Papers,
a proprietary Firm,
rep. by its Proprietor
Sri A.Manikandan
3/766 D1, Vijayalakshmi Colony,
Sivakasi, Virudhunagar District, Tamil Nadu - 626 123.

... Respondent/Petitioner
(in both Writ Appeals)

Common Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order of this Court made in W.P.(MD) Nos.5161 and 5528 of 2021, dated 26.03.2021.

Prayer in WP(MD). 5161/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents to cause release of the goods imported under Bill of Entry no. 2485273 dt 25.1.2021 namely two-sided coated paper in rolls without any further delay or procrastination on their part and thus render justice

Prayer in WP(MD). 5528/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondents to cause release of the goods imported under Bill of Entry No.2485600 dated 25.01.2021 namely one-sided coated paper in rolls without any further delay or procrastination on their part and thus render justice.

For Appellants (in both Writ Appeals) : Mr.B.Vijaya Karthikeyan

For Respondent (in both Writ Appeals) : Mr.B.Sathish Sundar

COMMON JUDGMENT

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

These appeals filed by the Commissioner of Customs, Tuticorin and two others are directed against the common order dated 26.03.2021, in W.P(MD).Nos.5161 and 5528 of 2021.

2. These writ petitions were filed by the respondent herein, praying for issuance of a Writ of Mandamus to direct the appellants to release the goods imported in Bill of Entry Nos.2485273 and 2485600 respectively, dated 25.01.2021, whereunder, they sought for clearance of the consignment which has been described as 'two-sided coated paper in rolls'.

3. The learned Writ Court allowed the writ petition and while doing so, held that the seizure and detention of goods were not warranted and consequently, issued directions for release of the goods. The correctness of the said order is being questioned before us by the Revenue by way of these appeals.

4. We have elaborately heard Mr.B.Vijaya Karthikeyan, learned Senior Standing Counsel appearing for the appellants and Mr.B.Sathish Sundar, learned counsel appearing for the respondent-importer.

5. Before we examine as to whether the stand taken by the Department before us is justified or not, we need to point out that the relief granted by the learned Writ Court is far beyond the prayer sought for as the entire adjudicatory mechanism has been set at naught, thereby virtually quashing the entire proceedings of seizure and detention, when the prayer sought for by the writ petitioner was only for a release of the goods. The lis before the Writ Court was to examine as to whether the detention/seizure of the goods was justified and for such purpose, all that is required to be considered is whether the importer has made out a *prima facie* case for clearance of the goods with or without any conditions. Beyond

that, the learned Writ Court could not be justified in rendering a finding, which will have a direct impact on the adjudicatory process. To be noted that the respondent-writ petitioner did not approach the Court for direction to the appellants to consider their case for provisional release of the imported consignment and that such a request was kept pending for a prolonged period. Nor it is the case of the respondent that any order was passed by the Department either accepting the request for provisional release with or without conditions or rejecting the request for provisional release. Since the prayer sought for by the respondent-writ petitioner was for issuance of an innocuous relief, the Court was required to confine itself to the relief sought for and not traverse beyond the boundaries, which will have impact on the adjudication process. Therefore, in these appeals, we are required to examine as to whether the respondent-importer has established a *prima facie* case for release of the goods pending adjudication and consequently, all findings rendered by the learned Writ Court on the merits of the matter need to be vacated and accordingly, stand vacated.

6. As mentioned above, we need to examine as to whether the respondent-writ petitioner has made out a *prima facie* case before the Court for release of the goods. The undisputed facts are as follows:

(i) The respondent-writ petitioner imported paper from Canada and in the Bill of Entry, they prescribed the consignment as 'One-side coated paper and two-side coated paper'. The Bill of Entry was filed through the automated process, wherein, the respondent-importer classified the product to fall under ITC (HS) Code 4810 1390. The appellant-Department entertained a doubt with regard to the nature of the goods imported and called for particulars from the importer including the detailed packing list.

(ii) On going through the packing list, the Revenue opined that the imported consignment is classifiable under 'Stock Lot of Paper' as per the Director General of Foreign Trade notification No.45/2015-2020, dated 31.01.2020 and such import is prohibited. The original notification as it stood prior to 2017, the product imported and classified under EXIM Code 4810 13 90 is freely importable, but subsequently, on account of an amendment, the HS Code 4810 of Chapter 48 of ITC (HS) 2017 was revised from "free" to "prohibited". Under the amended notification on and after 2017, import of "Stock Lot" is prohibited under any one of the sub-classifications, which fall under EXIM Code 4810.

(iii) On account of the amendment, which came into effect from 2017, it appears that there was serious doubts raised by the importers and representations were made which led to the issuance of clarification in Trade Notice No.8/2020-2021, dated 04.05.2020. In the said Trade notice, it has been noted that number of representations were received seeking clarification with regard to description of 'Stock Lot' used in the said notification and accordingly, the matter was examined in consultation with the Department for Promotion of Industry and Internal Trade (DPIIT) and the following clarification was issued:

"a. Import of different kinds of paper description under all the 22 tariff lines covered under ITC(HS) 4810 is 'Free'.

b. Importers should mention correct description of paper being imported at 8 digit number ITC(HS) 4810. They are expected to clearly specify quantities of paper under each 8 digit ITC(HS) separately.

c. If the whole imported paper consignment is without description for each category of paper as a Stock lot.

d. The Customs would check before allowing consignment where the description of imported paper matches with any/some of the 8 digit entries under ITC(HS) 4810. The Customs would allow consignment where paper of different description are intended to be imported and bundled together under ITC(HS)4810 as a Stock lot.

e. In case paper proposed to be imported is not covered in any of the existing 8 digit ITC (HS) 4810 under ITC(HS) 4810, Trade is advised to request Department of Revenue for the creating of new tariff line with proper justification."

(iv) The appellant-Department seek to bring the respondent's case under Clause-d of the above referred clarification. According to the appellants, the packing list shows that the product is of different sizes and different GSMs and therefore, it would fall within the meaning of "different description" and therefore, a "Stock Lot" and consequently, it is a prohibited import.

7. The learned counsel appearing for the respondent-importer has drawn our attention to the UO Note (unofficial note) dated 24.03.2021 and it is submitted that the Department in the second check did not dispute the classification, but, according to them, it was a "different description", because of different sizes and GSMs.

The Revenue seeks to sustain their contention which was advanced before the learned Writ Court as well as before us by referring to the packing list. It is submitted that the importer have imported LWC (Light-weight coated) paper and C2S, i.e., (two-sided coated paper) as evident from their detailed packing list, but have declared the imported cargo as 'two-sided coated paper', as to be imported paper of different GSM, size and hence, in order to circumvent the prohibition on the import of "Stock Lot of coated paper", the importer has not mentioned the same in the invoice/Bill of Entry, whereas, on examination of the cargo, the Stock Lot nature of the import cargo is very much evident.

8. Therefore, it is contended that the intention of the importer is to import "Stock Lot" of LWC (Light weight coated) paper and C2S coated paper of different GSM and size as stock lot and as such in terms of para 2(d) of the Trade Notice, the authorities have rightly seized the imported cargo as it is Stock Lot.

9. The argument of the learned counsel appearing for the respondent-importer is that at the first instance, the item description as mentioned against EXIM Code 4810 has to be looked into before going into the sub-items, one of which is 4810 13 19, under the category 'Other' and if the EXIM Code 4810 is taken into consideration, the different size and GSMs will not bring the import within the meaning of different description under Clause-2(d) of the clarification.

10. In our considered view, it is too early for the Writ Court to express any opinion on the issue, because, adjudication is yet to commence. However, taking out of the fact that paper of all categories which has been mentioned under EXIM Code 4810 is freely importable and only issue would be whether the import effected by the respondent is a "Stock Lot" or not is to be decided.

11. We are of the view that the imported goods may be directed to be released subject to the condition that importer give an undertaking to participate in the adjudication to be done by the appellant-Department. As prefaced by us, at the commencement of this judgment, the findings rendered by the learned Writ Court on the merits of the matter stands vacated and the appellant-Department is at liberty to issue show cause notice to the respondent on all issues and afford an opportunity to the respondent to submit their reply and participate in the adjudication proceedings.

12. In the result, these **Writ Appeals are partly allowed** to the extent indicated and there will be a direction to the appellants to release the imported consignment subject to the commencement of adjudication process by issuance of show cause notice, which shall be done not later than sixty days from the date of receipt of a copy of this judgment, after recording the undertaking of the respondent-

importer that they will participate in the adjudication proceedings. Since the goods have been detained ever since January 2021, and this Court has permitted release of the goods, the detention charges shall stand waived. The appellants shall release the subject cargo within a period of three weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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.*

+1 CC to M/s.B.VIJAYKARTHIKEYAN, Advocate (SR-19730[F] dated 21/06/2021)

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21.06.2021

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