



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.08.2021**

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.13790 of 2021

in

WM.P. (MD)No.10763 of 2021

M/s.Al Qahir International,
Represented by its Managing Partner,
Shri Shihad.

... Petitioner

/Vs./

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

2.The Deputy Director,
Directorate of Revenue Intelligence,
22/14, Celin Garden,
Roche Colony, South Beach Road,
Tuticorin - 628 001.

... Respondents

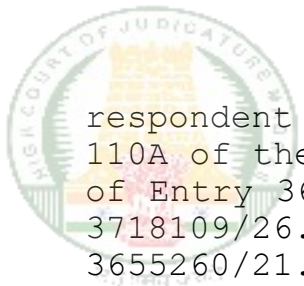
Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned proceedings in C.No.VIII/48/64/2021-SIIB dated 26.07.2021 issued by the first respondent and quash the same and consequently direct the first respondent to release the Black Pepper provisionally under Section 110A of the Customs Act, 1962; imported by the Petitioner vide Bills of Entry 3655257/21.04.2021; 3649935/21.04.2021; 3649146/21.04.2021; 3718109/26.04.2021; 3746469/28.04.2021; 3656537/21.04.2021; 3655260/21.04.2021; and 3655555/21.04.2021 and quash the same.

For Petitioner : Mr.Vijay Narayan
Senior Counsel
for Mr.B.Sathish Sundar

For Respondents : Mr.B.Vijay Karthikeyan
Standing Counsel

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records of the impugned proceedings in C.No.VIII/48/64/2021-SIIB dated 26.07.2021 issued by the first respondent and quash the same and consequently direct the first



respondent to release the Black Pepper provisionally under Section 110A of the Customs Act, 1962; imported by the Petitioner vide Bills of Entry 3655257/21.04.2021; 3649935/21.04.2021; 3649146/21.04.2021; 3718109/26.04.2021; 3746469/28.04.2021; 3656537/21.04.2021; 3655260/21.04.2021; and 3655555/21.04.2021.

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2.It is the case of the petitioner that, the petitioner is a partnership firm registered under the Indian Partnership Act. It is engaged in the business of importing and trading spices. It has placed orders for purchase of pepper (Black Pepper) of Sri Lankan Origin from various exporters in Sri Lanka. In furtherance of the said purchase orders, the pepper had been exported from Sri Lanka under various bills of lading against the notified quantity on various dates between 10.04.2021 and 27.04.2021.

3.The said consignments reached the Tuticorin Port in April 2021 and it is in the custody and control of the first respondent Customs Department. In this regard, according to the petitioner, he had provided all the documents to the customs Department for releasing of the goods, as the Black Pepper imported by the petitioner is not a prohibited goods, since the price of the Black Pepper is above Rs.500/- per kg. Therefore, as stipulated under the Foreign Trade Policy adopted by the Central Government, these goods cannot be treated as a prohibited goods. Therefore, after collecting necessary customs duty, the goods in question shall be released by the respondent Department. However, since they have not released the same and they seized the goods on the alleged reason that the goods are prohibited on the pretext that the price rate per kg is not above Rs.500/-, but it is below Rs.500/-. Therefore, as per the notification No.21/2015-2020, dated 25.07.2018, issued by the Director General of Foreign Trade (DGFT), Department of Commerce, Ministry of Commerce and Industry, these goods in question, which is Black Pepper, according to the respondent, is a prohibited item. Therefore, on that ground, they have not released the goods.

4.Only in that context, the petitioner, in order to release the goods in question, had made an attempt by filing a writ petition before this Court in W.P.(MD)No.9516 of 2021, where, an interim order of direction was also sought for in W.M.P.(MD)No.7249 of 2021. Considering the said plea made in the Miscellaneous Petition, a learned Judge of this Court, by order dated 27.05.2021, has passed the following interim order:

7. In the above circumstances, this Court is inclined to grant an Ad Interim Direction, directing the respondents to provisionally release the goods imported to the petitioner on the following conditions:-

''(i) The petitioner shall deposit a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) before



the second respondent and he has to execute a bond for a sum of Rs.6,00,00,000/- (Rupees Six Crores only) before the second respondent.

(ii)The petitioner shall not alienate or alter the goods.

(iii)The products should be kept safe somewhere within the local jurisdiction of the respondents.

(iv)The place of the storage of the products has to be intimated to the respondents.

(v)The respondents are directed to complete the enquiry within a period of two weeks from the date of receipt of copy of this order.

(vi)The petitioner shall produce the above said products as and when required, by the respondents.

(vii)If any of the aforesaid conditions are violated, this order automatically stands cancelled.''

5.Felt aggrieved over the said stringent condition imposed by the Writ Court in passing the aforesaid interim order, the petitioner preferred an intra-Court appeal in W.A.(MD)No.1156 of 2021. The said writ appeal was heard and decided by the Division Bench of this Court, by order dated 22.06.2021, wherein the Division Bench has held as follows:

"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.

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, Tutricorin, shall pass orders on the application of provisional release within a period of ten days thereafter. No costs."

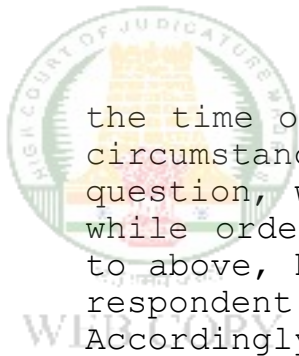
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6. Pursuant to the said direction given by the Division Bench of this Court, the petitioner has made an application to the respondents for the provisional release of the goods in question. The said application having been considered was rejected through the impugned order dated 26.07.2021 by the respondent Customs Department, as against which, the present writ petition has been filed.

7. Mr. Vijay Narayanan, learned Senior Counsel representing Mr. B. Sathish Sundar, learned counsel appearing for the petitioner has made two fold submissions. Firstly, the learned counsel appearing for the petitioner would submit that, insofar as the goods in question is concerned, it was imported with bill of lading, where the quantity has been clearly demarcated and price has also been declared, according to which, the price of goods in question is rupees more than Five Hundred per kilogram. The rate fixed for each of the consignment as per kilogram in INR is Rs.525 to Rs.533 per kg. That is how, all the eight consignments were imported. Therefore, the learned Senior Counsel would submit that, as per the notification No.21/2015-2020 dated 25.07.2018 issued by the DGFT, Black Pepper garbied with Exim Code 09041130 and Black Pepper ungarbied with Exim Code 09041140 are prohibited items, provided, the import is free, if the CIF is above Rs.500 per kg. Therefore, from the said notification, it has become clear that, once CIF of the goods referred to is above Rs.500/- per kg, it is importable and it is not covered under the prohibited items as per the notification.

8. Therefore, citing the said notification, the learned Senior Counsel would contend that, since the rate of each of the consignment imported by the petitioner has been clearly stated, which is ranging from Rs.525 to 533 per kg, certainly, it is above Rs.500 per kg, therefore, it is free to be imported. As such, the respondent Customs have no right to retain the goods, hence, the goods in question should have been released.

9. However, since the Customs Department has raised a doubt that if the rate of the goods in question might have been escalated by the importer and on that basis, if they want to make any adjudication by issuing show cause notice, certainly, it is open for them to do that exercise, however, it would take a reasonable time of a few months or a year or more normally in completing this kind of adjudication. Therefore, till such time, if the goods in question are kept idle, definitely, the goods would get wasted, at



the time of completion of the adjudication. Therefore, only in that circumstances, after having considered the nature of the goods in question, which were imported by the petitioner, the Division Bench, while ordering the Writ Appeal filed by the petitioner as referred to above, has permitted the petitioner to make an application to the respondent seeking for provisional release of the goods in question. Accordingly, when such an application was made, the same has been rejected through the impugned order unmindful of the rate having been declared, for which, bill of lading and other relevant documents having been submitted by the petitioner to the respondent Customs Department. Therefore, the impugned order is liable to be interfered with and the provisional release of the goods shall be ordered, he contended.

10.The second submission of the learned Senior Counsel appearing for the petitioner is that, when exactly a similar issue has been confronted by the Writ Court of the Principal Seat in a very recent judgment dated 14.07.2021 by a similar exporter of the same or identical goods, that is pepper, the Customs Department had raised an issue that it may be a prohibited goods and the rate would have been escalated and therefore, after adjudication, if it is to be declared as prohibited goods, then the question of releasing the goods does not arise, as redemption option to be given to the importer is the absolute discretion of the Customs authorities under Section 125 (1) of the Customs Act [hereinafter referred to as 'Act' for short] and therefore, the goods in question cannot be released even as provisional release, which was the contention raised by the customs Department before the Principal Seat of this Court in the said writ petition filed by a similar importer in ***M/s.Global Metro vs. The Commissioner of Customs and others*** in W.P.No.12454 of 2021.

11.The learned Senior Counsel would further contend that the Writ Court, after having considered the said case and counter case projected by the importer as well as the Customs Department has ultimately come to the conclusion that, the said decision can be made as to whether the goods in question involved in that case is a prohibited goods or not, only after adjudication is completed. Therefore, at this juncture, that is, before adjudication process, since the goods in question is perishable and edible goods, the same can be released by way of provisional release and in that view of the matter, the Writ Court has passed the following order in the said writ petition.

"12.I am given to understand by the learned Senior Standing Counsels for the Customs Department as well as for the DRI that the process of investigation would take some time and cannot be hurried.

13.The commodity in question is agricultural produce. The variety of black pepper imported is stated to be specific to the region of Srilanka,



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an important ingredient in the making of spices used in Indian cuisine, with a short shelf life. Assuming for the sake of argument that investigation is concluded in favour of the petitioner, if the provisional release is not granted, the entire consignments would have been compromised. The balance of convenience would thus require, in my considered view, that the consignments be released, subject to the petitioner being put to terms. This would also ensure that the interest of the Department are securely protected. The petitioner will remit the entire duty and furnish bond to the satisfaction of the Assessing Authority in regard to interest payable, penalty or charges that may be deemed necessary.

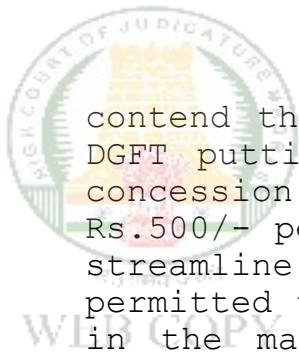
14.The impugned order is set aside. It is made clear that nothing contained in this order will stand in the way of an independent enquiry by the authorities in the on-going investigation. The Deputy Commissioner of Customs/R3 is directed to quantify the duty and bond amounts and communicate the same to the petitioner forthwith and release the goods within a week of such remittance by the petitioner.

15.On the issue of waiver of demurrage charges, the issue is left open to be pursued before the authorities in the light of applicable Rules and Regulations."

12.By relying upon the aforesaid recent judgment of the principal seat of this Court passed in the similar circumstances, the learned Senior Counsel would vehemently contend that, as against the said order since no appeal has been filed by the Customs Department and in fact the order has been accepted and acted upon by the Customs Department, the same benefit should be extended to the petitioner herein also on the same terms and conditions and therefore, this view can be taken by the very same Customs Department, which confronted with the petitioner for similar import, which taken place at Tuticorin port.

13.By making these two fold submissions, the learned Senior Counsel appearing for the petitioner seeks indulgence of this Court against the impugned order of rejection made by the respondent dated 26.07.2021 and seeks consequential direction to the respondents to release the goods by way of provisional release with conditions.

14.Per contra, Mr.B.Vijay Karthikeyan, learned Standing Counsel appearing for Customs Department, by relying upon the averments made in the counter affidavit and also various other documents filed in support of his contention by way of typed set of documents, would

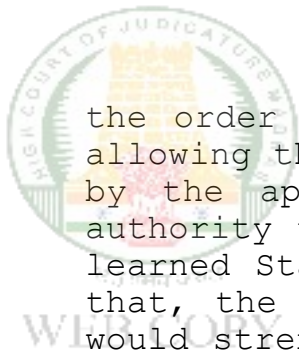


contend that, the very notification dated 25.07.2018 was issued by DGFT putting the Black Pepper as a prohibited item, but giving a concession that, if such Black Pepper is worth about more than Rs.500/- per kg as CIF, then it is importable, because, in order to streamline the local market, where if low priced pepper is freely permitted to be imported to India, that will have a negative impact in the market economy. By which, the local producers, ie., the agriculturalists of the local pepper would get affected. In order to save the local agriculturalists, who produce the Black Pepper at various parts of this country, this kind of prohibition has been imposed by DGFT through the notification dated 25.07.2018. When such a notification was issued and it is in force, no pepper with the value of less than Rs.500 per kg be permitted to be imported to Indian soil, as it is definitely a prohibited goods. If it is a prohibited goods, the only way out for the importer is, ofcourse after adjudication, to re-export the same, after paying penalty under various provisions of the Act.

15. In this regard, the learned Standing Counsel would further submit that, insofar as the redemption option for such kind of goods is concerned, as provided under Section 125 (1) of the Act, it is mandatory to give such an option to the importer to redeem the goods concerned, after paying the redemption fine, only if it is not prohibited for import. However, if it is a prohibited item, such kind of option need not be given to the importer, as it is only directory under Section 125(1) of the Act to give such an option to the importer.

16. He would also further enlarge his arguments stating that, in view of the latest judgment of the Hon'ble Supreme Court made in Civil Appeal No(s).2217 - 2218 of 2021 in the matter of ***Union of India and others vs. M/s.Raj Grow impex LLP and others [2021-TIOL-187-SC-CUS-LB]***, the right of the importer to get release of the prohibited goods either as a final release or provisional release is completely denuded.

17. Further elaborating the said arguments, the learned counsel appearing for the respondents would contend that, in the said case, the Hon'ble Supreme Court confronted the similar situation, where, pulses and spices were imported by various importers at Mumbai, as against which, Customs Department, though after adjudication, by the order in original has directed to release the goods, subsequently, the appellate authority, having reversed the order, has not permitted the import of the goods, either to get release of the goods or to redeem the same and when this action was questioned by the importer before the Bombay High Court, those writ petitions were allowed as against which, matter has gone to the Supreme Court, where, the Supreme Court, after having analyzed the matter in detail, has come to the conclusion that, the view taken by the Bombay High Court in this regard was not acceptable and therefore,



the order in original passed by the customs authorities, initially allowing the goods to be released was set aside and the order passed by the appellate authority reversing the order of the original authority was upheld. By relying upon this judgment heavily, the learned Standing Counsel appearing for the respondents would submit that, the observations made at various places in the said judgment would strengthen the stand of the Customs Department that the goods which are prohibited cannot be expected to be released either by way of provisional release or final release even after adjudication and the only option available is to re-export the same, after paying penalty.

18. When that is the legal position, the learned Standing Counsel would contend that, in the case in hand, since certainly the goods in question imported by the petitioner is a prohibited goods, though that can be ascertained to be declared as such, only after adjudication which formally has to be undertaken by the respondent Customs Department, the goods in question if it is released now by way of provisional release, that would go contra to the law declared by the Hon'ble Supreme Court in the aforesaid case in **Raj Grow impex** as by the time if such declaration has come after adjudication that the goods in question are prohibited goods, then, there would be no availability of the goods to absolutely confiscate and permit the importer to re-export the same, after paying penalty. By thus, the very purpose of prohibition by way of notification of DGFT dated 25.07.2018 would get defeated. That is the reason why the Customs Department, forecasting the same, has rejected now the plea of the petitioner to release the goods, by way of provisional release, through the impugned order. Hence, the learned Standing Counsel would seek sustainment of the impugned order and submits that it does not require any interference from this Court.

19. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

20. There is no dispute that the petitioner is having licence to import and he has admittedly imported eight consignments of Black Pepper from Sri Lanka, which is the originating country and it had been imported through the Tuticorin port. The same has been intercepted and it has been seized on the ground allegedly that the goods imported is a prohibited goods, in view of the notification dated 25.07.2018 of DGFT.

21. Though an initial attempt was made by the petitioner to release the cargo by seeking for an interim order, though the learned Judge permitted to release the goods by way of interim order, since some stringent conditions were imposed, as against which, the petitioner himself has filed an Intra-Court Appeal as referred to above. In Intra-Court Appeal, in W.A.(MD)No.1156 of



2021, the Division Bench of this Court by order dated 22.06.2021, though set aside the interim order passed by the Writ Court permitting the petitioner to get release of the goods, ofcourse with stringent conditions, however, has given liberty and permission to the petitioner to make a separate application to the respondent Customs Department to get the goods released by way of provisional release, for which, according to the Division Bench of this Court, no earlier application had been filed by the petitioner.

22.It is to be noted that, as against the said Division Bench order, no appeal had been filed by both parties and infact, the judgment had been accepted and acted upon by both, as the petitioner had made application to the respondent customs department for getting the goods released by way of provisional release. That application submitted by the petitioner now has been rejected through the impugned order dated 26.07.2021.

23.Therefore, the fact remains insofar as this case is concerned, that, pursuant to the order of the Division Bench of this Court referred to above, the petitioner had made an application for provisional release of the goods concerned. Having entertained such application, the same was rejected by the respondent customs on merits, that is the impugned order herein. Therefore, one thing has become clear that, it is not the stand of the Customs authorities while passing the impugned order that, the petitioner does not have even the right of making application seeking provisional release of the goods before adjudication commences. However, now the stand has been taken by the respondent Customs, as has been vehemently contended and projected by the learned Standing counsel for the respondent that, even the right of making application to get the provisional release of the goods, if it is a prohibited one, does not arise, as per the Hon'ble Supreme Court orders referred to above in ***Raj Grow Impex*** case.

24.In this context, it is the stand of the Customs Department to state that, if ultimately after adjudication, the Customs Department comes to the conclusion that the goods in question is a prohibited goods and in that case, in the meanwhile if by way of provisional release an importer gets the goods released and sell it in the market, there would be no chance for the Customs Department to confiscate the same and to permit the petitioner to re-export the same, after paying the penalty, as that is the term indicated by the Hon'ble Supreme Court in the said case.

25.However, the fact remains that, in the present case insofar as the goods in question is concerned, according to the Counsel for the petitioner, it is not a prohibited goods. Because, the rate of consignment per kg is above Rs.500/-. It is a fact that if it is above Rs.500/-, certainly, it is not a prohibited goods. Whether it



is above Rs.500/-, or less than Rs.500/-, is the matter for adjudication, as the same cannot be decided either by customs Department or by this Court at this juncture, without having a full-fledged adjudication, for which necessary procedure is to be adopted and followed.

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26. During the course of arguments, when a question was posed to the Customs Department that, whether, within a shortest possible time ie., within few weeks, this kind of adjudication would be possible for the customs Department, the answer was not in the affirmative. That means the Customs Department will certainly take a reasonable time to complete the adjudication.

27. Herein the case in hand if at all the Customs Department feels that it is definitely a prohibited goods, as the rate would have been enhanced or escalated, certainly on these aspects, documents should be collected from the exporter from the originating country and after collecting those documents and related documents to establish that the importer has purchased the goods only with a lesser value, that is less than Rs.500/- per kg, the adjudication can be completed successfully by the Customs Department to come to a conclusion that the goods in question is a prohibited goods.

28. Instead, if ultimately, the Customs Department is not able to establish their stand by proven documents to show that the goods in question have been imported with the price lesser than Rs.500, certainly the Customs Department will have no other option, except to release the goods, as if it is more than Rs.500 per kg, hence it is a permitted goods and not a prohibited goods, even according to the notification dated 25.07.2018. In that eventuality or in the meanwhile, certainly, as alleged by the learned Senior Counsel appearing for the petitioner, the goods in question would get wasted, because, it is no doubt a perishable or edible goods, that is, Black Pepper and its self life itself is for a limited period, within which if it is not marketed or put in use, absolutely, the entire value of the goods will go down or it may not be fit for human consumption at one point of time. Therefore, in order to meet these kind of circumstances, whether a provisional release is permissible or not is the question here.

29. In this context, it is not the definite case of the Customs Department, even after quoting the judgment of the Hon'ble Supreme Court referred to above dated 17.06.2021 in **Raj Grow Impex** case that, such kind of right of importer even to make an application to get a provisional release is not available with importer. The fact situation is that, the importer has definitely got a right to make an application to get provisional release of the goods concerned, depending upon the nature of the goods. If it is edible goods or perishable goods, certainly, that kind of right would always be available to the importer to make an application to get it released



by way of provisional release. This has been recognized by the Division Bench of this Court in the order referred to above dated 22.06.2021. That is the reason why, such permission was given to the petitioner to make application to the Customs Department for provisional release of the goods.

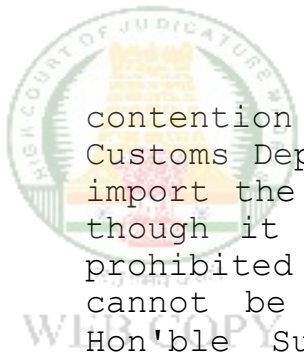
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30.No doubt, that the application having been entertained, has been rejected by the Customs Department through the impugned order on the reason that, the rate quoted by the petitioner for imported consignment is certainly an escalated figure and it is not a real figure. On that ground, they have rejected. Whether it is an escalated figure or a real figure cannot be finally adjudicated at this juncture, without having completed the adjudication process, which is admittedly yet to be commenced.

31.More over, the learned Senior Counsel appearing for the petitioner has contended that, in respect of **Raj Grow Impex** Case, dated 17.06.2021, predominantly, it relates to the order passed by the Bombay High Court, where the goods in question having been seized or kept in custody, was adjudicated and after adjudication, though original authority passed an order in favour of the importer, subsequently, the appellate authority has reversed the order that it is a prohibited goods, therefore, it is liable to absolute confiscation. Only in that circumstances, whether the interference made by the Bombay High Court was to be accepted or not was the prime question that triggered the Customs Department to file the SLP before the Hon'ble Supreme Court, where such findings have come. Therefore, in the present case, since adjudication is yet to be commenced and at this juncture, it cannot be conclusively decided that the goods in question is only prohibited goods, the balance of convenience certainly is in favour of the petitioner. Hence, in these circumstances, the right of getting provisional release is always available with the importer. That is the reason why, the right has been recognized by the Division Bench of this Court, where permission was given to the importer to make application for provisional release. Therefore, the learned Senior Counsel would contend that the judgment in **Raj Grow Impex** case may not stand in the way, in view of the facts of the present case. This argument of the learned Senior Counsel for petitioner is to be accepted.

32.According to the learned Senior counsel, the issue raised in this writ petition is exactly covered by the order passed by the Writ Court in the Principal Seat of this Court referred to above in **M/s.Global Metro** case, dated 14.07.2021, where, the learned Judge passed an order giving direction to release the goods provisionally and relevant portion has already been quoted hereinabove.

33.The said order was, according to the learned Senior Counsel, having been accepted by the Customs Department, had been acted upon. This factor is not controverted by the Customs Side. It was the



contention raised by the learned Standing Counsel appearing for the Customs Department that, if these kind of importers are permitted to import the prohibited goods and ultimately after adjudication, even though it comes to the conclusion that the goods in question are prohibited goods, if it is the case, where the goods in question cannot be made available for re-exporting, as indicated by the Hon'ble Supreme Court in **Raj Grow Impex** Case, these kind of importers would again involve in such kind of activity of importing prohibited goods, therefore, each and every occasion, the Customs Department would be put in trouble to go for full-fledged adjudication to establish the case that the particular consignment imported by the importer is prohibited goods.

34. Insofar as the said contention raised by the Customs Department is concerned, since these aspects has not been so far agitated before any Court of law, this Court feels that, this kind of unscrupulous import, if finally adjudicated by the Customs Department that they imported only the prohibited goods, certainly will be a serious issue, and in that case as has been held, it is an issue between the commercial advancement of individual importer vs. National interest at large.

35. The reason being that, the restrictions made through the notification dated 25.07.2018 by the DGFT is only to regulate the local and domestic market, where if large quantity of these kind of goods are kept in the local market, certainly, that will have a negative impact. Thereby, local agricultural producers who produce these kind of goods will get definitely affected. Only in order to protect the local agriculturalists, these kind of restrictions are being made by the Government of India through the DGFT. That is the reason why, these restrictions have come that if you are importing the low priced black pepper, certainly that will have an impact in the market. Therefore, in order to maintain equilibrium and to prohibit these kind of importers who again and again make the mistakes by importing the prohibited goods, certainly some stringent measures can be taken with the aid of the Foreign Trade (Development and Regulation) Act, 1992, under which, the import-export licence is given by the DGFT and the same can very well be suspended, if any contravention is noticed by the licence issuing authority. In this context, this Court wants to quote Section 8 of the Foreign Trade (Development and Regulation) Act, 1992, which reads thus:

"8 Suspension and cancellation of Importer-exporter Code Number:

[(1) Where?

(a) any person has contravened any of the provisions of this Act or any rules or orders made thereunder or the foreign trade policy or any other law for the time being in force relating to Central excise or customs or foreign



exchange or has committed any other economic offence under any other law for the time being in force as may be specified by the Central Government by notification in the Official Gazette; or

(b) the Director-General or any other officer authorised by him has reason to believe that any person has made an export or import in a manner prejudicial to the trade relations of India with any foreign country or to the interests of other persons engaged in imports or exports or has brought disrepute to the credit or the goods of, or services or technology provided from, the country; or

(c) any person who imports or exports specified goods or services or technology, in contravention of any provision of this Act or any rules or orders made thereunder or the foreign trade policy, the Director-General or any other officer authorised by him may call for the record or any other information from that person and may, after giving to that person a notice in writing informing him of the grounds on which it is proposed to suspend or cancel the Importer-exporter Code Number and after giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice and, if that person so desires, of being heard, suspend for a period, as may be specified in the order, or cancel the Importer-exporter Code Number granted to that person.]

(2) Where any Importer-exporter Code Number granted to a person has been suspended or cancelled under sub-section (1), that person shall not be entitled to import or export any goods or services or technology except under a special licence, granted, in such manner and subject to such conditions as may be prescribed, by the Director-General to that person."

36.Therefore, if at all the Customs Department finds with documents to substantiate that the goods in question having been imported by the petitioner is prohibited goods within the meaning of 25.07.2018 notification issued by DGFT, apart from taking a decision of declaring the goods as prohibited goods and imposing penalty etc., they can also make a strong recommendation to the DGFT to initiate action against the importer under the provisions of Foreign



Trade (Development and Regulation) Act, 1992, especially under Section 8 referred to above and to allow the same to reach its logical conclusion. As it is a drastic decision to be taken by the Foreign Trade Department with the recommendation of Customs Department in any given case, where the documents are rightly available with the customs department, this Court feels that some check and balance measure can be ensured to be placed as against these kind of importers.

37. Under these circumstances, this Court feels that, since the right of the petitioner to get provisional release of the goods concerned is not taken away and in fact, this has been reiterated in a similar circumstances by the Hon'ble Supreme Court in an interim order which has been very recently passed on 11.08.2021 in SLP No.7565 of 2021 which has arisen out of W.A.No.690 of 2021 dated 04.03.2021 from this Court, that kind of right cannot be completely curtailed by any authority. Therefore, once such application is made by the importer for releasing the goods by way of provisional release on the ground that the goods are perishable or edible goods, certainly, it should be taken into account and considered and accordingly, the provisional release shall be made by the Customs Department with the conditions to be imposed in this regard.

38. In this context, the earlier order passed by the learned Judge referred to above in similar circumstances in ***M/s.Global Metro*** case, can very well be followed in the present case also. Accordingly, I am of the view that this writ petition can be disposed of with the following order:

(i) that the impugned order is set aside for the reasons discussed above and in view of the same, the respondent is hereby directed to pass orders for releasing the goods in question by way of provisional release of course by imposing the following conditions:

that the petitioner shall pay the entire customs duty and also to execute a bank guarantee for interest, penalty or charges that may be charged and in this context, the respondent before passing such order for provisional release, shall quantify the amount, which may be imposed by way of penalty and charges etc., on the petitioner and equal to that amount, the bank guarantee shall be obtained from the petitioner and after getting the same, the goods in question shall be released by way of provisional release.

(ii) Further, this Court wants the respondent Customs Department to complete the adjudication process at the earliest, for which, the petitioner shall cooperate without taking any unnecessary



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adjournments and after completing the adjudication process at the earliest, within a reasonable time, ultimately if the Customs Department comes to a conclusion that the goods in question are prohibited goods, within the meaning of notification dated 25.07.2018, the needful as per law shall be undertaken by the Customs Department. That apart, the Customs Department shall also make a recommendatory report to the DGFT to initiate action against the petitioner within the meaning of Section 8 of the Foreign Trade (Development and Regulation) Act, 1992. The needful as indicated above to pass orders of making provisional release of the goods concerned shall be undertaken within a period of one week from the date of receipt of a copy of this order.

(iii) It is further made clear that, insofar as the claim to be made with regard to the waiver charges, it can be considered separately in accordance with law.

39. With these directions and observations, this Writ Petition is ordered accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// 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.

To

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

+1 CC to M/s.M.RAMASAMY, Advocate (SR-27064[F] dated 24/08/2021)

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-27008[F] dated 23/08/2021)

W.P. (MD) No.13790 of 2021

Dated: 23.08.2021