BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:31.08.2021
CORAM:
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
W.P.(MD)No.14427 of 2021
and
WMP(MD)No.11364 0f 2021

M/s.Venkatalakshmi Paper & Boards Pvt. Ltd.,
Rep. by its Executive Director. ... Petitioner

Vs.

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

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

3.The Assistant Commissioner of Customs,(SIIB)
Customs House, New Harbour Estate,
Tuticorin-628 004. ... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents to release forthwith the imported consignment of 63 Metric Tons of 'Waste Paper-Old Book' under Bill of Entry No.4566679 dated 05.07.2021 in favour of the petitioner, or in the alternative, release the same after mutilating the contents thereof under supervision of the respondents herein in terms of Section 24 of the Customs Act, 1962.

For Petitioner : Mr.Isaac Mohanlal,
Senior Counsel
for M/s.Isaac Chambers
For Respondents : Mr.R.Aravindan
Standing counsel

O R D E R

The prayer sought for in this writ petition is for a writ of mandamus to direct the respondents to release forthwith the imported consignment of 63 Metric Tons of 'Waste Paper-Old Book' under Bill of Entry No.4566679 dated 05.07.2021 in favour of the petitioner, or in the alternative, release the same after mutilating the contents thereof under supervision of the respondents herein in terms of Section 24 of the Customs Act, 1962.

2.The short facts, which are required to be noticed for the disposal of this writ petition are as follows:

That the petitioner is a Private Limited Company in the name and style of Venkatalakshmi Paper and Boards Private Limited. The company is involving in manufacturing of newsprint papers and paper boards. It is one of the major suppliers of newsprint papers to the most reputed daily newspaper companies and other publishers in the country. For the purpose of manufacturing of the newsprint papers, the company imports old, waste and unused papers from various countries, such waste papers will be imported to India through ships by paying necessary customs duty. Mostly, the company import such kind of waste papers through Tuticorin Port.

3.Like that the petitioner has imported such kind of waste papers from a supplier from New Zealand, namely, one M/s.Oasis Imports and Export New Zealand limited. Accordingly, an agreement was reached between the petitioner and the supplier on 04.06.2021, pursuant to which 63 metric tons of waste paper and old books had been imported by the petitioner through Tuticorin Port. The consignment could reach the Tuticorin Port on 05.07.2021, however, before which, that is, on 03.07.2021, the petitioner had given a request letter to the respondent Customs Department that, since the imported goods are waste papers in the book form and therefore, if the Customs Department feel that, it should be denatured or mutilated, the same can also be undertaken as per Section 24 of the Customs Act, for which the petitioner would cooperate and whatever the expenses to be incurred and the exercise to be undertaken for mutilating the goods in question, the petitioner would spend, and the mutilation work can also be conducted in the presence of the customs officials.

4.Though such a request having been made by the petitioner on 03.07.2021, which was acknowledged or received by the respondent Customs Department, on 03.07.2021, there had been an inspection of the goods concerned, based on which, according to the Customs Department, they found it as if that they are new books imported for the different purpose, not for the purpose of making it as a pulp and therefore, on the alleged mis-declaration on the part of the petitioner, the respondent Customs seems to have seized the goods after completing the special team's inspection on 23.07.2021 under mahazer. Therefore, the goods are now under the custody of the Customs Department, therefore, in order to release the goods, either in the same form or after mutilating the same as contemplated under Section 24 of the Customs Act, the petitioner seeks indulgence of this Court by issuance of writ of mandamus, that is, how the present writ petition has come up.

5.In support of the said prayer Mr.Isaac Mohanlal, learned Senior Counsel appearing for the petitioner has invited the attention of this Court that, the petitioner itself is a paper manufacturing industry, it has been doing its business for several years and as a raw-material for making it as a pulp, these kind of waste papers, either in the paper form or in the book form, are being imported from various foreign countries, and this has been undertaken by the petitioner Company atleast for the past six years, and in all such transaction of importing the waste papers, the petitioner is undertaking such import only through the Tuticorin Port, and according to the learned Senior Counsel, for all these years, there has been no complaint whatsoever against the petitioner, especially in the context of alleged mis-declaration.

6.The learned Senior Counsel would further submit that, insofar as the consignment in question is concerned, there was a clear agreement between the supplier and the importer which entered on 04.06.2021, under which importing of 63 metric tons waste papers and old books had been agreed upon, the gross value of the item comes only around Rs.13,00,000/-(Rupees Thirteen lakhs only) and therefore, based on which, the bill of entry were produced on 05.07.2021, the date on which the goods were expected to reach the port, however prior to the goods reached to the port, that is, on 03.07.2021, the aforesaid letter had been given by taking a definite stand on the part of the petitioner/importer that, it is a wastepaper in the book form, therefore, it can be released as such as per the declaration made by the petitioner otherwise, if the Customs Department feel that it cannot be treated as a waste paper, because it is in the book form, it can be mutilated and or denatured and accordingly, the same can be released.

7.The learned Senior Counsel would further contend that, despite the definite stand having been taken by the petitioner well before the goods reached to the Port, that is, before the Customs Department takes a view as to what exactly the form of the goods in question imported by the petitioner, the petitioner since has made its stand definite and requested for even mutilation or denaturing of the goods concerned, the question of seizure of the goods does not arise. Therefore, the learned Senior Counsel appearing for the petitioner seeks indulgence of this Court to issue a direction as has been sought for.

8.On the contrary, Mr.R.Aravindan learned Standing Counsel for the respondent Customs has relied upon the averments made in the common counter affidavit filed on behalf of the respondents, and he would point out that, in the very declaration, it has been stated by the petitioner/importer that, it is a waste paper, but after conducting inspection initially on 08.07.2021, and subsequently by a special team by way of detailed inspection on 23.07.2021, it was found that all are brand new books and each book will have a price and therefore *prima facie*, a doubt has arisen in the minds of the Customs Department that, the goods in question, whether can only be treated as a wastepaper book or to be treated as a brand new book for different purpose, that is, selling it in the market for its worth and price.

9.The learned Standing Counsel would further submit that, in view of the said mis-declaration and *prima facie* since the Customs Department found that it is a mis-declared goods, they have seized the goods in question under mahazer on 23.07.2021, and the follow-up procedure like issuing show cause notice to the petitioner and after reply, adjudication process has to go on, then only after thorough investigation and adjudication, the respondent customs can come to a conclusion that whether the claim made by the petitioner that it is only a wastepaper or the apprehension or the *prima facie* view of the Customs Department that, it is not a mere newspaper, it is a new book for its worthiness, is correct or not and therefore, at this juncture, the question of releasing the goods does not arise.

10. The learned Standing Counsel would further submit that, if this kind of mis-declared goods have been seized by the Customs Department before the adjudication is concluded, the decision as to whether the same can be treated as waste paper or scrap and it can be mutilated and released, can only be taken up depending upon the time when the declaration was made by the importer. In this context, the learned Standing Counsel appearing for the respondents has relied upon two decisions of the Hon'ble Supreme Court, one is that **Collector of Customs v. Hardik Industrial Corporation**, reported in 1998 (97) ELT 25 SC:(1998) 1 SCC 494 and the second case is **Union of India v. Madanlal Steel Industries Ltd.**, reported in 2001 (132) ELT 526(SC).

11. By relying upon these two decisions of the Hon'ble Apex Court, the learned Standing Counsel would further submit that, in those cases, it has been made clear that, the time of declaration is relevant, and in the present case, the declaration admittedly was made by the petitioner only just two days prior to the goods reached to the port, by giving a letter on 03.07.2021 stating that, if at all the Customs Department wants to mutilate it, the petitioner will be ready and willing to go for such process.

12. Even in the said letter, dated 03.07.2021, it has been definitely made by the petitioner/importer that, it is brand new book, however it is being imported for the purpose of making it as a paper pulp in its industry. Therefore, there has been a wavering statement on behalf of the petitioner/importer as to the nature of the goods imported, no indefinite stand was taken by the petitioner even in their letter, dated 03.07.2021. Only after the goods was found to be a mis-declared one *prima facie* after inspection on 08.07.2021, since the petitioner has produced certain communication between the supplier and the importer, dated 12.07.2021 or 13.07.2021, as those documents can only be treated as a sheer after thought, in order to overcome the clutches of the Customs Department towards either confiscate the goods or otherwise after adjudication. Therefore, the 03.07.2021 letter cannot be taken as a proper declaration on the part of the petitioner/importer, if the principle laid down in the two cases referred to above of the Hon'ble Supreme Court is applied to the present facts of the case, therefore, the learned Standing Counsel would submit that, if at all the petitioner wants to release the goods, it can be released only by way of provisional release under Section 110(A) of the Customs Act, and not as an absolute release as has been sought for, either with mutilation or without mutilation, in the prayer of the writ petition, therefore, the learned Standing Counsel would submit that the writ petition for the present prayer cannot be entertained and therefore, it is liable to be rejected.

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

14. It is a fact remains that the petitioner is a paper and boards manufacturing company, it has been doing the said business for several years and the present management had taken the company and running the company for last few years wherein, according to the petitioner, they import these kinds of waste papers and books from various foreign countries and most of such import were undertaken only through the Tuticorin Port, and in respect of all such imports, there had been no such complaint whatsoever made against the petitioner that, the petitioner ever had mis-declared the goods and imported some valuable goods or papers in the guise of wastepaper.

15. It is also to be noted, insofar as the present consignment is concerned, there has been an agreement between the suppliers and the petitioner/importer on 04.06.2021, where the specific agreement or contract between the parties is to supply 63 metric tons of wastepaper and old books through Kaiser International Exports to the Tuticorin Port. The gross value of the goods was only around Rs.13,00,000/-.

16. No doubt, the form of the wastepaper is in book form and assuming that these books are new books or brand new books, and the same had been imported by the petitioner for the purpose of making it as a paper pulp, it has to be taken note of the fact that, if really the goods in question are more worthy than what has been declared by the petitioner, and if these goods are brand new books, which have been imported by the petitioner for different purpose to sell the same in the market for their price, certainly, the value of the goods could be multifold than what has been stated in the agreement.

17. In such case, no prudent importer would voluntarily come forward to mutilate such goods. Assuming that if the seized goods are facing the adjudication and ultimately if the Customs Department found that it is a mis-declared goods for which, there should be a customs duty, redemption penalty, etc., imposed against the petitioner/importer, instead of meeting the same, the petitioner/importer cannot loose the value of the entire goods in question to mutilate the same, if really, it is a worthy book to be sold in the Indian market, for its original market price.

18. Further, it is to be noted that, the goods have not been found as a mis-declared goods by the Customs Department before 08.07.2021, however on 03.07.2021 itself, the petitioner has voluntarily written to the respondents stating that the goods in question, are wastepaper books with covers for repulping with hard and soft cover where there has been a specific request on behalf of the petitioner that, the petitioner may be permitted to clear the consignments, however, if required, they shall denature or mutilate the imported goods as per Section 24 of the Customs Act. In order to appreciate the said stand of the petitioner as reflected in 03.07.2021 letter, the content of the letter is extracted hereunder:

> "*Ref:B/L:AEL1099858 Dt.16/06/2021*
>
> *Dear Sir,*
>
> *We would like to inform your goodselves that we are one of the manufacturer and importer of various grades of wastepaper to manufacture of paper and Paper Board. We have been importing through Tuticorin Port for more than 6 years and also registered with central Excises and pollution control Board.*
>
> *Now we have imported waste paper vide subject BL.No.AEL1099858 from M/s.OASIS IMPORTS/EXPORTS (NZ) LTD, New Zealand. We have submitted our import documents with description of the cargo as "Waste Paper-Books with covers for re-pulping with hard and soft cover. Based on that we are going to file the Bill of Entry for home consumption under customs Notification No.50/2017 S.L.No.292(B) with necessary central excise certificate.*
>
> *We hereby confirm that this consignment will be fully utilized for manufacturing of news print only by converting into pulp using our hydraulic pulper and not for any sale purpose. In this regard we shall produce ANNEXURE III C.No.VIII/16/40/2021-CUS Dt:02.06.2021.*
>
> *Sometime we may get order of used/unused old books which we assure you that it cannot be sold in India*

as it will be in Arabic/Spanish/English etc., will not have relevance and the contents of the book in India.
We request to your goodselves to kindly permit us to clear the consignments, however if required we shall denature or mutilation the imported as per Section 24 of the Customs Act which will enable us to clear the subject consignment."

19. Though it has been argued by Mr.R.Aravindan, learned Standing Counsel for the respondents that, even in the letter dated 03.07.2021 cited supra, the petitioner has not made out any definite stand about the nature of the goods that has been imported, the following words "Wastepaper-books with covers for Re-pulping with Hard and Soft covers" explicitly disclosed that the goods in question is wastepaper books with hard and soft covers.

20. Merely because the goods in question is in the form of books, may be a new book or old book, it cannot be stated that, it is only a book for different purpose to sell in the market and not to be used as a wastepaper for making the pulp in paper industry.

21. In normal parlance, if a paper in the book form is not going to be utilised for any reading or reference purpose, and it is going to be utilised for waste paper purpose, eventhough if it is in a new book form or a brand new book form, that can only be treated as a wastepaper. Moreover, the petitioner since has come forward voluntarily before the goods reached the port, that they are ready and willing to go for denaturing or mutilation of the goods in question, that should have been taken in to account by the Customs Department on the goods reaching the port, after verifying the goods in question comparing with the request or stand taken by the petitioner through the letter dated 03.07.2021.

22. Merely because, in the declaration or bill of entry or bill of lading, it is stated as a wastepaper, it cannot be stated that it is a mis-declaration, unless and until the Customs Department found it as a different item not going to be utilised as a wastepaper by making their own inspection or investigation without having any such declaration prior to the same.

23. This has been exactly pointed out as a proposition by the Hon'ble Supreme Court in the **Collector of Customs v.Hardik Industrial Corporation**, case cited supra, where, the Supreme Court has stated that, the point of time at which the importer made the offer of mutilation was relevant. Like that in **Union of India v. Madanlal Steel Industries Ltd.**, case also, it has been held that, the release of the goods, which were willfully mis-declared to cheat the revenue not to be permitted under Section 24 of the Customs Act.

24. If the principle laid down by the Hon'ble Supreme Court in the afore cited two cases, which have been heavily relied upon by the respondent department as projected by the learned Standing Counsel for Customs, are applied to the facts of the case, certainly, the goods in question in the present case cannot be fit in either of these two principles.

25. The reason being that, the point of time at which the importer made the offer of mutilation, has to be considered, where, in the present case, on 03.07.2021, admittedly, the petitioner's letter had reached the respondents, where a definite stand had been taken by the petitioner that, they want to mutilate it, if the Customs Department treat it as a book not as a wastepaper. Secondly, if at all any willful mis-declaration as intended by the petitioner/importer, there was no need for him to make a letter on 03.07.2021 to mutilate the same.

26. As I have referred to above, if the importer really imported the goods in question as brand new books for the purpose of selling it in the Indian market, definitely, the worth of the goods would be multifold than what has been declared, that is, around 13,00,000/- rupees worth for the wastepaper, so such kind of valued goods cannot be volunteered by the petitioner to be mutilate, as that will be more loss to the petitioner than to pay the redemption fine as well as the customs duty even if ultimately the Customs Department found that it is a misdeclared good, therefore, it is to be confiscated with redemption right.

27. Therefore these circumstances, if we looked into by applying the preposition held in the two cases referred to above, certainly the petitioner can be differentiated in view of the facts, which we have narrated above, therefore, this Court feel that the subsequent action to conduct an inspection on 08.07.2021, and a further inspection by a special team on 23.07.2021 followed by the seizure under mahazer, are all may be a unwarranted exercise, even if the goods in question, are to be treated only as books, they could have very well allowed the books to be mutilated for which the petitioner had already expressed his willingness on 03.07.2021 itself. Therefore, the argument advanced by the learned Standing counsel appearing for the Customs Department that once the goods are seized that will be followed by the procedure to be adopted in conducting adjudication after giving show cause notice, then only, the decision as to whether the goods in question are a properly declared goods or mis-declared goods can be decided, does not arise in the present case at all. Therefore, merely because a seizure has been taken place, it cannot be stated that the adjudication has to go in the present case, and therefore at this juncture, only provisional release under Section 110(A) alone is possible.

28. All these procedure, which should be normally adopted in every such case may not be required in this case, in the considered opinion of this Court, in view of the peculiar facts and circumstances, where two important aspects has to be taken note of, one is that the petitioner itself is a paper manufacturing industry and it has been doing this kind of importing of waste paper in book form for several years from various countries, and secondly, the petitioner had volunteered to mutilate the same on 03.07.2021, that is, well before the goods reached the port. Therefore, these two circumstances make this case a different one than the usual cases, therefore, the usual formalities to be adopted by the respondent Customs Department under various provisions of the Customs Act, as has been projected by the learned Standing counsel may not be required in the present case, and therefore this Court feel that the prayer sought for can be considered, and accordingly, a direction can be given to the respondents.

29. In view of the afore-stated discussion, this writ petition is disposed of with the following order:

> "that there shall be a direction to the respondents to consider the claim/request of the petitioner as per his request dated 03.07.2021, permitting the petitioner to denature or mutilate the goods in question, which has been imported as per Bill of Entry dated 05.07.2021 seized on 23.07.2021, in the presence of the Customs Officials after adopting the due formalities in this regard, as contemplated under Section 24 of the Customs Act, and accordingly, after mutilation or denaturing of the goods in question, the same can be released to the petitioner by adopting the usual and regular procedure for imposing the applicable customs duty and other charges. The needful as indicated above shall be undertaken by the respondents within a period of two weeks from the date of receipt of a copy of this order."

30. With these directions, this writ petition is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

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,
Customs House, New Harbour Estate,
Tuticorin-628 004

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

3.The Assistant Commissioner of Customs,(SIIB)
Customs House, New Harbour Estate,
Tuticorin-628 004.

+1 CC to M/s.ISAAC CHAMBERS (SR-27847[F] dated 01/09/2021)

W.P.(MD) No.14427 of 2021
31.08.2021

GC(27.09.2021) 10P 5C