BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.12.2021
CORAM:
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN
W.A(MD)No.1782 of 2021

M/s.Al Qahir International,
Represented by its Managing Partner,
Shri Shihad, 13/489, A.Kumara Nellur,
Thrissur District, Kerala. ... Appellant/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- 628 004. ... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 23.08.2021 in W.P(MD)No.13790 of 2021.

Prayer in WP(MD). 13790/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court 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 1st respondent and quash the same and consequently direct the 1st 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 and pass such or other orders deem fit in the facts and circumstances of the case and thus render justice.

For Appellant : Dr.S.Krishnakandh for
Mr.B.Sathish Sundar
For R-1 & R-2 : Mr.B.Vijay Karthikeyan

JUDGMENT

PUSHPA SATHYANARAYANA, J.

The Writ Appeal is directed against the order dated 23.08.2021 made in W.P(MD)No.13790 of 2021.

2. The writ appellant is a partnership firm registered under the Indian Partnership Act, engaged in the business of importing and trading in spices. The appellant had placed orders for purchase of Black Pepper of Sri Lankan origin from various exporters in Sri Lanka. Pursuant to the purchase orders, the pepper had been exported from Sri Lanka under the Bills of Lading in 18 number in the quantity notified therein. The consignments reached Tuticorin port in April, 2021 and are in control of the first respondent Customs Department. The appellant also submitted all the required documents for clearance of the said Black Pepper and undertook to pay the statutory duty leviable on the goods imported by them. According to the appellant, import of Black Pepper is not prohibited by any Law for the time being in force. However, despite submitting all the relevant documents and necessary Bills of Lading and Bills of Entry, the imported goods have not been cleared. All those documents that were required to be produced by the respondents were also submitted. However, the goods have not been cleared and the delay in clearance of goods have caused serious prejudice and irreparable loss to the appellant.

3. To be noted is that the consignments carrying the very same commodity had been cleared by the respondents and other custom Houses in the country. As the respondents are denying the clearance of the containers of the appellant, they are forced to pay demurrage charges. Besides the above said difficulties, the imported goods being agricultural produce would result in spoilage if not cleared at the earliest as they are perishable. The appellant also filed the Bills of entry in discharge of their obligation under Section 46 of the Customs Act, 1962. As the commodity was intended for home consumption, on submission of the Bills of Entry, the respondents are duty bound to clear the same under Section 37 of the Customs Act 1962. Hence, the appellant approached this Court by filing W.P(MD) No.9516 of 2021 along with W.M.P(MD)No.7249 of 2021 seeking direction for provisional release of goods imported by the appellant. The said interim direction mandated the appellant to deposit Rs.50,00,000/- before the second respondent and execute a bond for a sum of Rs.6,00,00,000/- before the second respondent with other conditions. Aggrieved by the said order, a writ appeal in W.A (MD)No.1156 of 2021 was filed by the appellant herein, which was also disposed of on 22.06.2021 by allowing the writ appeal and setting aside the interim direction issued by the Writ Court. The appellant was directed to file a proper application for grant of provisional release of the Cargo along with relevant documents

before the Commissioner of Customs, Tuticorin, and after affording an opportunity of hearing to the appellant, an order shall be passed by the Commissioner of Customs Tuticorin on the application of provisional release within a period of ten days thereafter. Accordingly, an application was made by the appellant on 02.07.2021 for provisional release of the imported Black Pepper seized by the Directorate of Revenue Intelligence (DRI), Tuticorin. After hearing the appellant, an order was passed by the first respondent on 26.07.2021 rejecting the request of provisional release of the goods, which constrained the appellant to file W.P(MD)No.13790 of 2021. An order came to be passed on 23.08.2021 by the Writ Court by imposing the following conditions:

> "*(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 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."

4. Aggrieved by the said order passed by the learned Single Judge, the above writ appeal is preferred by the appellant.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. The learned counsel appearing for the appellant would contend that they were ready to remit the statutory duty imposed for the goods and furnish a bond to the satisfaction of the Assessing Authority with respect to the interest payable, penalty or charges that may be deemed necessary. The appellant is only aggrieved by the direction to furnish a bank guarantee equivalent to the interest, penalty and other charges.

7. The learned counsel appearing for the appellant placed reliance on a case decided by the Principal Bench of this Court in M/s.Global Metro case in W.P.No.12454 of 2021, wherein only a bond was directed to be furnished and bank guarantee was not insisted. Therefore, it was contended that the Writ Court ought to have followed the same lines which was agreeable to the respondents, however directed the appellant to produce bank guarantee instead of executing a bond. Therefore, the only contention of the learned counsel appearing for the appellant was that the order under challenge deserves to be set aside and the respondents may be directed to accept the bond instead of bank guarantee with regard to the interest, penalty and charges as had been ordered by the Principal Bench in M/s.Global Metro case.

8. Even otherwise, it is pointed out that seizure of the goods imported was based on the reason that the appellant had admitted the overvaluing of goods so as to overcome the prohibition imposed in respect of the said good as per the Trade notification dated 25.07.2018, wherein Black Pepper is prohibited from import if the import value is less than Rs.500/- per kg. It is pointedly argued by the learned counsel for the appellant that the investigation by the DRI is still in progress and no charges have been levied as against the appellant herein for any violation or any show cause notice been issued in this regard. Therefore, without the quantification, directing the appellant to furnish bank guarantee would be premature and any delay in quantifying by following the

procedure would lead to deterioration of the quality of the goods imported making it unfit for human consumption.

9. The respondents have refused to release the goods as the appellant had overvalued the import of Black Pepper to overcome the notification. The overvaluing of the goods has been done by the appellant in order to render the Black Pepper freely importable. Now, the only question arises for consideration is whether the release of goods provisionally in terms of 110A of the Customs Act in respect of the said goods can be issued. It is only valuation of the goods is in question as import of the goods valuing less than Rs.500/- per kg.,is prohibited.

10. The learned counsel for the respondents pointed out that totally the value declared by the importer in respect of imported Black Pepper as per the Bills of Entry was Rs.6,44,80,013/- with unit price in the range of Rs.525/- to Rs.523/- per kg(CIF). The re-determined value in respect of the above Bills of Entry by the Department worked out to Rs.3,60,74,557/- with the unit price in the range of Rs.287/- to Rs.304/- per kg. Therefore, it was argued that provisional release of the goods can be made under Section 110(A) of the Customs Act 1962 and the guidelines issued by CBIC circular, as per the value declared by the importer for execution of bond and furnishing of bank guarantee since the case has not been adjudicated and hence, the value re-determined in the show-cause notice cannot be taken.

11. In the light of the above submissions made by the respective counsels and even the fact that the final adjudication is yet to be done, we are of the opinion that the respondents are directed to quantify the duty and bond amount and communicate the same to the appellant and release the goods within a week on such remittance by the appellant. The appellant would remit the entire duty if not remitted already and furnish the bond to the satisfaction of the respondents in regard to the interest payable, penalty or charges that may be deemed necessary.

12. To make it clear, we modify the condition imposed by the Writ Court to furnish bank guarantee to furnish a bond to the same value. So far as the adjudication is concerned, the authorities are to proceed with the same without being influenced by this order as this order does not express any opinion in that regard.

13. Excepting the above modification, the order passed by the learned Single Judge in all other aspects shall stand confirmed.

14. The writ appeal is disposed of accordingly. No Costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

pm

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.

Copy to:

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+1 CC to M/s.S.B.SATHIS SUNDAR, Advocate (SR-40401[F] dated 27/12/2021)

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-40090[F] dated 23/12/2021)

JUDGMENT MADE IN
W.A(MD)No.1782 of 2021
22.12.2021

ARK(CO)
GC(04.01.2022) 6P 5C