



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.10.2021**

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.16736 of 2021

and

W.M.P. (MD) No.13632 and 13636 of 2021

M/s.Janatha Timber Industries,
Represented by its Proprietor Mr.R.Velayutha Raja.

...Petitioner

-Vs-

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

2. The Assistant Commissioner of Customs (Imports),
Custom House, New Harbour Estate,
Tuticorin - 628 004

3. The Plant Quarantine Officer (E),
Government of India,
Ministry of Agriculture & Farmers Welfare,
(Department of Agriculture Cooperation & Farmers Welfare)
Directorate of Plant Protection, Quarantine & Storage,
Plant Quarantine Station,
Tuticorin.

...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 third respondent herein connected with order No. IR21TUT2021005572, dated 28.07.2021, on the file of the third respondent and quash the same and consequently direct the third respondent to grant Relaxation for clearance of subject consignment covered under Bill of Entry No.3994756, dated 19.05.2021, on payment of necessary four times penalty charges for dispensing with the Phytosanitary Certificate and further direct the second and third respondents herein to release the above subject consignment on the above relaxation granted.

For Petitioner	: Mr.A.K.Jayaraj
For R1 and R2	: Mr.B.Vijay Karthikeyan Standing Counsel
For R3	: Mrs..L.Victoria Gowri Assistant Solicited General of India

**ORDER**

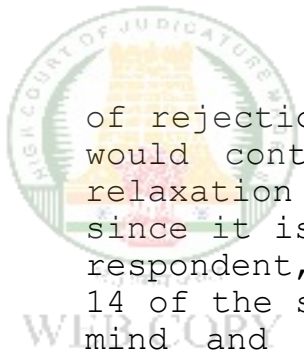
The prayer sought in this Writ Petition is for a Writ of Certiorarified Mandamus, calling for the records of the third respondent herein connected with order No. IR21TUT2021005572, dated 28.07.2021, on the file of the third respondent and quash the same and consequently direct the third respondent to grant Relaxation for clearance of subject consignment covered under Bill of Entry No.3994756, dated 19.05.2021, on payment of necessary four times penalty charges for dispensing with the Phytosanitary Certificate and further direct the second and third respondents herein to release the above subject consignment on the above relaxation granted.

2.The case of the petitioner is that, the petitioner is an importer and he has imported teak wood to the extent of 1,06,710 Kgs., in 914 packages from the originating country called, Panama, ie., Roadman Panama Port on 21.05.2021 vide Bill of Lading dated 22.03.2021.

3.The consignment arrived at Tuticorin Port on 21.05.2021. The bill of entry in Bill of Entry No.3994756 dated 19.05.2021 has been produced and the inspection by taking sampling was also done on 24.05.2021 and 25.05.2021 by the respondents and ultimately, by order of the third respondent, the consignment of the petitioner had not been permitted to be released from the port and there has been an order for deportation within fifteen days was issued, failing which, arrangement will be made to destruction of the consignment at the own risk of the petitioner. This order was passed by the third respondent on 28.07.2021. Challenging the same, the present writ petition has been filed.

4.Heard Mr.A.K.Jayaraj, learned counsel appearing for the petitioner, who would submit that, under the Plant Quarantine (Regulation of import into India) Order, 2003 [in short "said Order, 2003"], these kind of imports have to be made only with valid import permit or phytosanitary certificate. Herein the case in hand, since the goods were loaded into the ship, by way of Bill of Lading dated 22.03.2021, due to COVID-19 second wave, the petitioner importer could not obtain the phytosanitary certificate.

5.Knowing well this, the petitioner had made a request to the third respondent to give relaxation under Clause 14 of the said Order, 2003. However, the said request has been turned down by the third respondent, through the impugned order stating that, since the petitioner has availed maximum number of relaxation of phytosanitary certificate and such kind of relaxation can be permitted to one importer one time under Clause 14 of the said Order, 2003, such kind of relaxation now once again sought for by the petitioner cannot be granted. Therefore, on that ground alone, since the impugned order

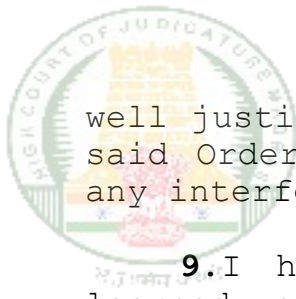


of rejection has been made, the learned counsel, by citing the same would contend that, the petitioner has never requested for any relaxation prior to this request, from the third respondent and since it is the first time request made by the petitioner, the third respondent, who is empowered to give such relaxation, under Clause 14 of the said Order, 2003 referred to above, could have applied his mind and granted such relaxation taking into consideration the COVID-19 situation, because of which, necessary phytosanitary certificate could not be obtained by the petitioner from the originating country.

6.The learned counsel in this regard, would further submit that, if an opportunity is given to the petitioner, the petitioner would be able to establish the fact that the petitioner has never asked any relaxation of the phytosanitary certificate before making request for the present consignment, which is in issue and therefore, unmindful of the said factual matrix, since the said reason has been stated by the third respondent in making such rejection order, which is impugned herein, learned counsel appearing for the petitioner seeks indulgence of this Court against such impugned order.

7.Per contra, Mrs.L.Victoria Gowri, learned Assistant Solicited General of India appearing for the respondents, would submit that, insofar as the reason stated by the third respondent in rejecting the request of the petitioner by passing the impugned order dated 28.07.2021 is concerned, as to why such rejection has been made by citing the reason that the petitioner has already availed the relaxation, is to be specifically stated by way of written instructions to the Assistant Solicited General of India by the third respondent. In this regard, though the learned Assistant Solicited General of India seeks some time to get instructions, since the same, in view of the aforestated facts, may not be required to be clarified that whether it is the first time of relaxation sought for by the petitioner or not, for the reason which, we are going to discuss in the later portion of this order, the further time sought for by the learned Assistant Solicitor General of India is not granted.

8.However, the learned Assistant Solicitor General of India would contend that, unless the phytosanitary certificate is produced, the consignment, which is in question imported by the petitioner cannot be permitted to be released, as it is a mandatory requirement. She would also submit that, though one time relaxation is permissible under Clause 14 of the said Order, 2003, such one time relaxation since has been availed by the petitioner, no more relaxation can be expected from the third respondent and therefore, on that ground, that reason has been specifically stated in the impugned order, she contended. Therefore, the learned Assistant Solicited General of India would submit that the impugned order is



well justified and sustainable one in the teeth of Clause 14 of the said Order, 2003. Therefore, the impugned order does not warrant any interference, she contended.

9.I have considered the said rival submissions made by the learned counsel appearing for the petitioner as well as the respondents and have perused the materials placed before this Court.

10.The only controversy which arose for consideration in this writ petition is as to whether the petitioner is entitled to get relaxation under Clause 14 of the said Order, 2003 from producing the phytosanitary certificate.

11.Whether the reason cited by the petitioner for getting relaxation of production of phytosanitary certificate, due to COVID-19 is the matter to be dealt with only by the Officer concerned, that is the third respondent, who is empowered under Clause 14 of the said Order, 2003. Therefore, in that regard, this Court do not want to make any view. But, at the same time, the only reason cited by the third respondent rejecting the relaxation, which is reflected in the impugned order dated 28.07.2021 is that, due to already availed the maximum number of relaxation by the petitioner.

12.In this context, it is asserted by the learned counsel appearing for the petitioner that, the petitioner has never asked for any relaxation for production of phytosanitary certificate before the present relaxation sought for in this consignment or import.

13.When that being the factual position, that can very well be gone into by the third respondent and accordingly, a decision can be taken.

14.Assuming that the reason stated by the third respondent is correct, where the petitioner already availed the relaxation for production of phytosanitary certificate, even then, for second or subsequent relaxation, the power may not be vested with the third respondent, but vested with the Joint Secretary to Government of concerned Department, before whom, if the very request is made by any importer for giving relaxation for production of phytosanitary certificate second time or subsequent time, that can also be considered in the public interest and accordingly, that can also be considered by the Joint Secretary to the Government of the Department concerned.

15.In this regard, Clause 14 of the said Order, 2003 is extracted hereunder for easy reference:

*"14.Relaxation conditions of Import Permit
and Phytosanitary Certificate in certain cases-*

(1) The Central Government may, in public



WEB COPY

interest, relax any of the conditions of this Order relating to the import of any consignment. The Joint Secretary in-charge of Plant Protection in the Department of Agriculture & Cooperation shall be the competent authority for according the relaxation. Further the powers of relaxation has been delegated (vide DAC lt. No.8-5/2004-PPI (pt) dated 2nd February 2005) to officers in charge of the Plant Quarantine Stations for relaxing the conditions of Import permit and phytosanitary certificate required as per Plant Quarantine (Regulation of Import into India) Order, 2003 as a one-time exception in favour of a single party and not for repeated violations by that party. All second or subsequent cases of violation of requirement of Import Permit and Phytosanitary certificate by any party shall be forwarded to Joint Secretary (Plant Protection), Department of Agriculture & Cooperation.

(2) In the event of grant of relaxation by competent authority, the consignment shall be released after charging the fee for import permit and fee for plant quarantine inspection at five times of normal rates.

(3) The provisions of this Order shall apply without prejudice to the Customs Act, 1962 (52 of 1962) or any other Acts or Order related to imports."

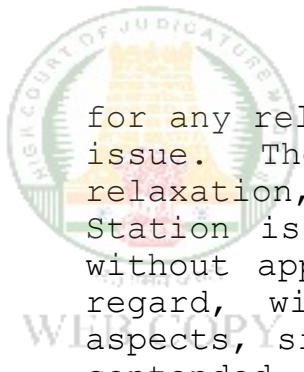
16. Under Clause 14, it has been made clear that the powers for relaxation has been delegated to the Officer in-charge of the Plant Quarantine Station for relaxing the conditions of the said Order, 2003 as a one-time exception in favour of a single party and not for repeated violation by that party. Therefore, it has been made clear that only one time relaxation is permissible in respect of one party at the hands of the Officer in-charge of the Plant Quarantine Station.

17. Herein the case in hand, the third respondent is Officer concerned of the Plant Quarantine Station. Therefore, his power is to grant one time relaxation, not beyond that.

18. However, for all second and subsequent cases of violation, the issue shall be forwarded to the Joint Secretary (Plant Protection) Department of Agriculture and Co-operation, who shall consider the same and decide it for second or subsequent relaxation on violation is concerned.

19. Therefore, two things have to be borne in mind while deciding these cases. First thing is that the petitioner has

<https://hcservices.eetortd.gov.in/hcservices/>



for any relaxation except the present relaxation, which is now under issue. Therefore, according to him, this is the first or one-time relaxation, hence, the Officer in-charge of the Plant Quarantine Station is empowered to do so, that is the third respondent, who without applying his mind, without recording the reasoning in this regard, without giving an opportunity of being heard in these aspects, since has passed the impugned order, it is bad in law, he contended.

20.The second aspect that to be borne in mind is that, assuming that the petitioner has already availed one time relaxation, for further relaxation, the power may not be vested with the Officer in-charge of the Plant Quarantine Station, but is vested with the Joint Secretary (Plant Protection) Department of Agriculture and Co-operation, to whom the request of the petitioner ought to have been forwarded.

21.Herein the case in hand, the forwarding of the issue has not been undertaken by the third respondent, therefore, in this aspect also, this Court feels that, the impugned order can be interfered with.

22.For the reasons stated above and the discussions made hereinabove, this Court feels that, the impugned order can be set aside and the matter can be remitted back to the third respondent for consideration as to whether the petitioner has made any earlier request and availed any relaxation or not and if there is no such relaxation benefit or waiver of the production of phytosanitary certificate, the officer concerned, ie., the third respondent can very well consider for grant of such relaxation, within the meaning of Clause 14 of the said Order, 2003, but at the same time, if the petitioner is not able to satisfy the third respondent and if there are records to show that the petitioner has already availed the relaxation benefit or waiver of the production of phytosanitary certificate, then the matter can be referred to the Joint Secretary (Plant Protection), Department of Agriculture and Co-operation, to take a decision thereon and accordingly, the petitioner can put forth his case before the Joint Secretary concerned, for getting such relaxation for the second time or subsequent time, as the case may be.

23.In the result, the following orders are passed in this writ petition:

that the impugned order is set aside. The matter is remitted back to the third respondent for re-consideration. While reconsidering the same, aforesaid observation shall be borne in mind by the third respondent and accordingly, after giving an opportunity of being heard to the petitioner to substantiate his contention that at first time, he



wants to avail the relaxation benefit under Clause 14 of the said Order, 2003 and after considering the same, final order can be passed by the third respondent as indicated above, either to grant relaxation or forward the same to the Joint Secretary (Plant Protection) Department of Agriculture and Co-operation. The needful shall be undertaken by the third respondent, within a period of four weeks from the date of receipt a copy of this order.

24. With these directions, this Writ Petition is ordered to the terms indicated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sm

To

1. The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004.
2. The Assistant Commissioner of Customs (Imports),
Custom House, New Harbour Estate,
Tuticorin - 628 004
3. The Plant Quarantine Officer (E),
Government of India,
Ministry of Agriculture & Farmers Welfare,
(Department of Agriculture Cooperation & Farmers Welfarem
Directorate of Plant Protection, Quarantine & Storage,
Plant Quarantine Station,
Tuticorin.

+1 CC to M/s.A.K.JAYARAJ, Advocate (SR-31085[F] dated 04/10/2021)

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-31238[F] dated 05/10/2021)

W.P. (MD) No.16736 of 2021

Dated:

04.10.2021

RK (01/11/2021) 7P 6C

<https://hcservices.ecourts.gov.in/hcservices/>