BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.12.2021
CORAM:
THE HONOURABLE MR.JUSTICE M.SUNDAR
W.P.[MD]No.21469 of 2021
and
W.M.P(MD).No.18038 of 2021

M/s.Southern Trade Links
Rep. by its Proprietor : Petitioner

Vs.

1. The Deputy Director,
Directorate of Revenue Intelligence,
No.8 (P), 1st Stage, 3rd Block,
Bengaluru – 560 068.

2. The Commissioner of Customs,
Custom House,
New Harbour Estate,
Turicorin – 628 004.

3. The Joint Commissioner of Customs,
Custom House,
New Harbour Estate,
Turicorin – 628 004.

4. The Assistant Commissioner of Customs (SIIB),
Custom House,
New Harbour Estate,Turicorin – 628 004. : Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the respondents 2 to 4 to release forthwith the petitioner's consignment of imported black pepper under Bill of Entry Nos.3506834 and 3577848 dated 09.04.2021 and 15.04.2021 respectively, as ordered by the first respondent in F.No.DRI/BZU/S-IV/ENQ-13 (INT-NIL)/2021 dated 16.06.2021.

For Petitioner : Mr.Isaac Mohanlal
Senior Counsel
instructed by Ms.P.Nivithaa Jothi of
for M/s.Isaac Chambers (Law Firm)

For Respondents : Mr.R.Aravindan,
Senior Standing Counsel
for Central Excise and Customs

O R D E R

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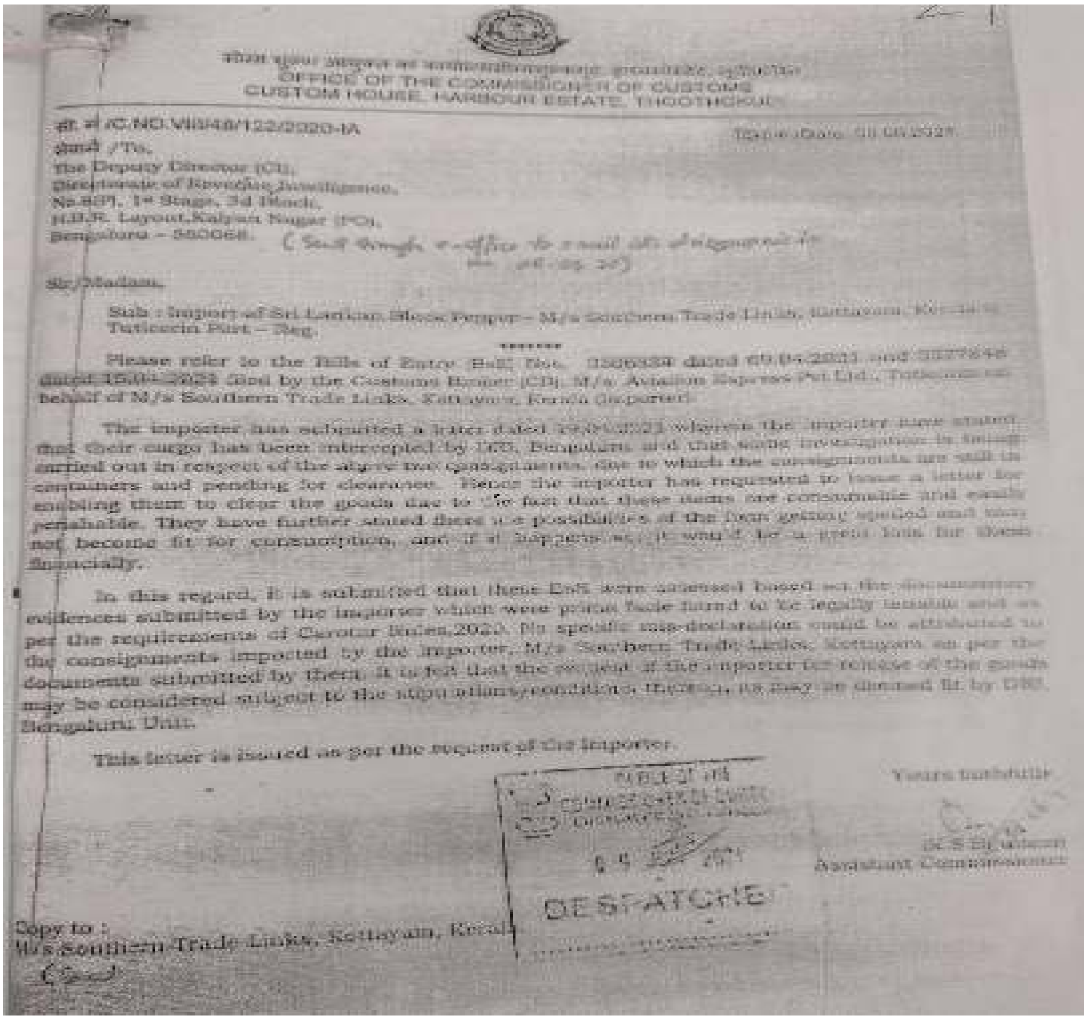
In the captioned main writ petition the writ petitioner has imported 52000 Kilograms of Black Pepper from Sri Lanka valued a little over INR 2.62 Crores. Consignment arrived at Tuticorin Port in April 2021 and two Bills of Entry for home consumption, namely Bill of Entry Nos.3506834 and 3577848 dated 09.04.2021 and 15.04.2021, respectively, were filed.

2. Thereafter the first respondent seized the aforementioned consignment (hereinafter 'said consignment' for the sake of brevity) on the ground that it has been over-valued so as to make it importable. The issue is alleged overvaluation of said consignment at Rs.505/- per Kilogram to get over notifications which prohibit import of black pepper valued at below Rs.500/- per Kilogram. Show cause notice has been issued and adjudication is under way.

3. Mr.Isaac Mohanlal, learned Senior Counsel appearing on behalf of counsel on record for writ petitioner submits that the fourth respondent has given a certificate dated 08.06.2021 recommending release of the said consignment and more importantly the first respondent vide communication dated 16.06.2021 bearing reference number F.No.DRI/BZU/S-IV/ENQ-13(INT-NIL)/2021 has made it clear that the samples have already been drawn from said consignment, investigation is under way and the seized consignment may not be required for further investigation. This Communication dated 08.06.2021 from the fourth respondent reads as follows:



[illegible]
OFFICE OF THE COMMISSIONER OF CUSTOMS
CUSTOM HOUSE, HARBOUR ESTATE, THOOTHUKUDI

[illegible] /C.NO.VIII/48/122/2020-IA [illegible] Date: [illegible]

[illegible] /To,
The Deputy Director (CI),
Directorate of Revenue Intelligence,
No.[illegible], 1st Stage, 3rd Block,
H.B.R. Layout, Kalyan Nagar (PO),
Bengaluru – 560043.

Sir/Madam,

Sub : Import of Sri Lankan Black Pepper – M/s Southern Trade Links, Kottayam, Kerala – Tuticorin Port – Reg.

Please refer to the Bills of Entry (BoE) Nos. 3506834 dated 09.04.2021 and 3577848 dated 15.04.2021 filed by the Customs Broker (CB), M/s. Aviation Express Pvt Ltd., Tuticorin on behalf of M/s Southern Trade Links, Kottayam, Kerala (Importer).

The importer has submitted a letter dated [illegible] wherein the importer have stated that their cargo has been intercepted by DRI, Bengaluru and that some investigation is being carried out in respect of the above two consignments, due to which the consignments are still in containers and pending for clearance. Hence the importer has requested to issue a letter for enabling them to clear the goods due to the fact that these items are consumable and easily perishable. They have further stated there is a possibility of the item getting spoiled and may not become fit for consumption, and if it happens so, it would be a great loss for them financially.

In this regard, it is submitted that these BoE were assessed based on the documentary evidences submitted by the importer which were prima facie found to be legally tenable and as per the requirements of Carotar Rules,2020. No specific mis-declaration could be attributed to the consignments imported by the importer, M/s Southern Trade Links, Kottayam as per the documents submitted by them. It is felt that the request of the importer for release of the goods may be considered subject to the stipulations/conditions thereon, as may be deemed fit by DRI, Bengaluru Unit.

This letter is issued as per the request of the importer.

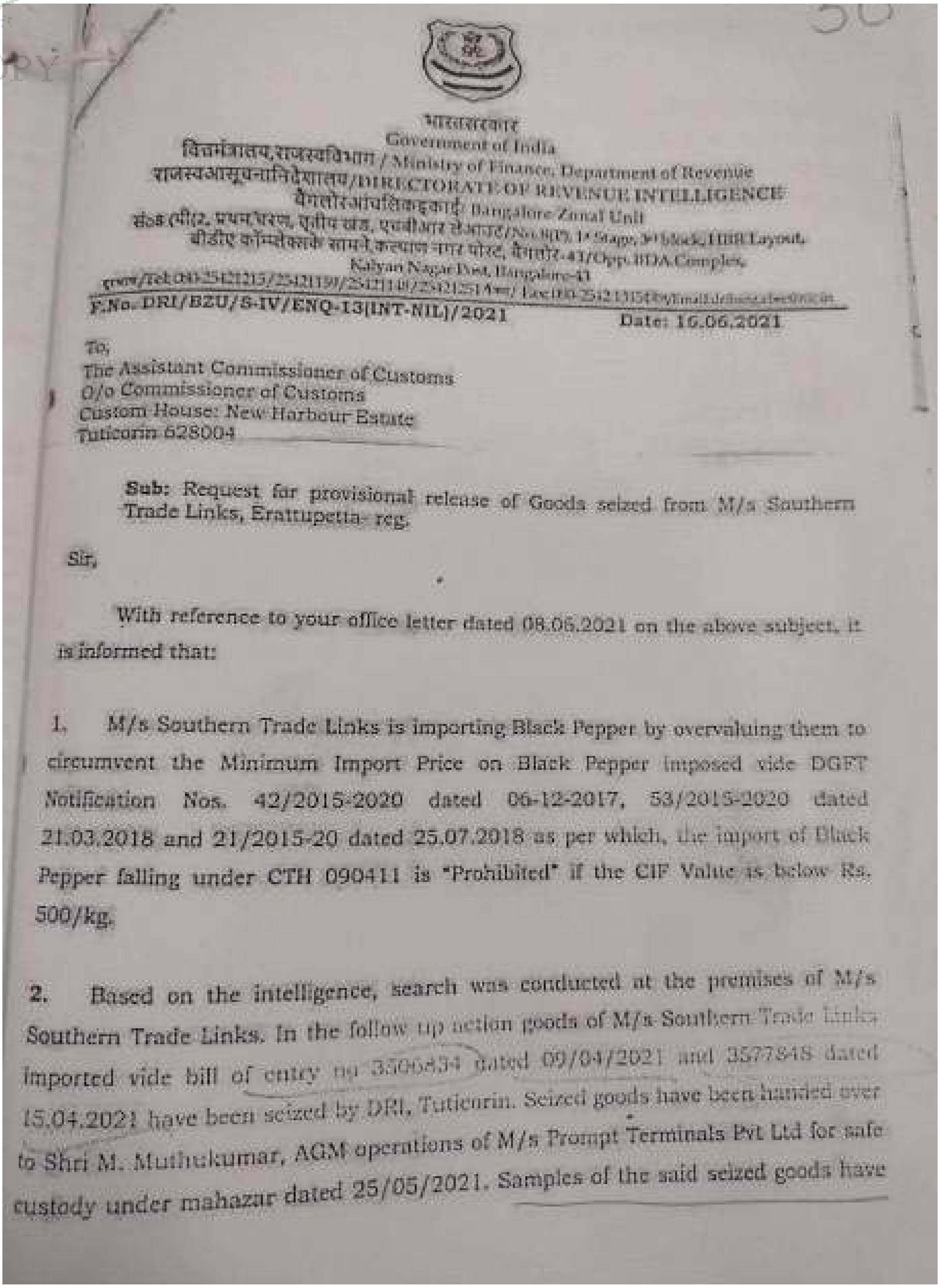
Yours faithfully

[illegible]
Assistant Commissioner

DESPATCHED

Copy to :
M/s Southern Trade Links, Kottayam, Kerala

4. Aforementioned communication from the office of the first respondent dated 16.06.2021 reads as follows:



भारतसरकार
Government of India
वित्तमंत्रालय,राजस्वविभाग / Ministry of Finance, Department of Revenue
राजस्वआसूचनानिदेशालय/DIRECTORATE OF REVENUE INTELLIGENCE
बैंगलोरआंचलिकइकाई/ Bangalore Zonal Unit
No.9(P), 1st Stage, 3rd block, HBR Layout,
Opp. BDA Complex, Kalyan Nagar Post, Bangalore-43

F.No. DRI/BZU/S-IV/ENQ-13[INT-NIL]/2021 Date: 16.06.2021

To,
The Assistant Commissioner of Customs
O/o Commissioner of Customs
Custom House: New Harbour Estate
Tuticorin 628004

Sub: Request for provisional release of Goods seized from M/s Southern Trade Links, Erattupetta- reg.

Sir,

With reference to your office letter dated 08.06.2021 on the above subject, it is informed that:

1. M/s Southern Trade Links is importing Black Pepper by overvaluing them to circumvent the Minimum Import Price on Black Pepper imposed vide DGFT Notification Nos. 42/2015-2020 dated 06-12-2017, 53/2015-2020 dated 21.03.2018 and 21/2015-20 dated 25.07.2018 as per which, the import of Black Pepper falling under CTH 090411 is "Prohibited" if the CIF Value is below Rs. 500/kg.

2. Based on the intelligence, search was conducted at the premises of M/s Southern Trade Links. In the follow up action goods of M/s Southern Trade Links imported vide bill of entry no 3506834 dated 09/04/2021 and 3577848 dated 15.04.2021 have been seized by DRI, Tuticorin. Seized goods have been handed over to Shri M. Muthukumar, AGM operations of M/s Prompt Terminals Pvt Ltd for safe custody under mahazar dated 25/05/2021. Samples of the said seized goods have

(underlining made by this Court to supply emphasis, for

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already been drawn. Further investigation is under process. However, seized ... may not required for further investigation

3. In view of the above, action as deemed fit may be taken on the request of the importer for provisional release since the adjudicating authority is the proper authority to take action on the matter as per the provisions of the Section 110 of the Customs Act, 1962 and in view of the guidelines issued by CBIC from time to time.

Yours faithfully

16/06/21

(DEEPTI I.P)

Deputy Director

DESPATCHED.........................

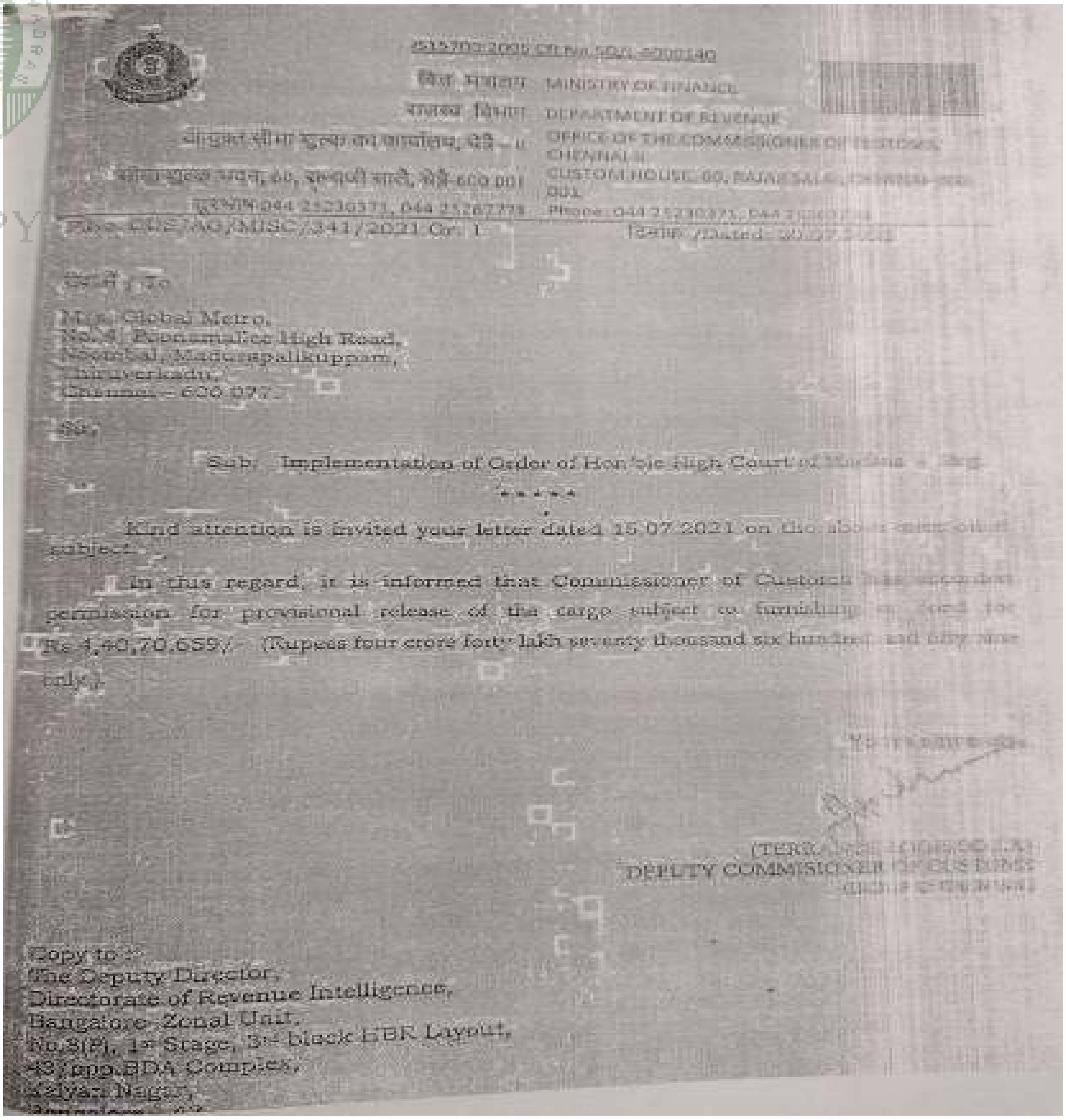
O.C. No...875.. Date...17.6.21

Initials of Despatcher

O/c

ease of reference and for highlighting)

5. Learned Senior Counsel also draws the attention of this Court to another order made by a Hon'ble Single Judge in the Principal Seat of this Court in W.P.No.12454 of 2021 and WMP therein being order dated 14.07.2021. It is submitted that this order made by learned Single Judge in the Principal Seat is identical and the case on hand is directly and squarely covered by the same. In other words, learned Senior Counsel submits that this order applies in all fours to the case on hand. More importantly this Court is informed that this order has been duly complied with by the Customs Department and the proceedings dated 20.07.2021 in this regard reads as follows:



वित्त मंत्रालय MINISTRY OF FINANCE

राजस्व विभाग DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER OF [illegible], CHENNAI-II

CUSTOM HOUSE, 60, RAJAJI SALAI, [illegible] 001

Phone: 044 25230371, 044 [illegible]

File: [illegible]/AG/MISC/341/2021 Gr. I [illegible] /Dated: [illegible].07.2021

M/s. Global Metro,
No.3, Poonamallee High Road,
Noombal, Maduravoyalkuppam,
Thiruverkadu,
Chennai – 600 077.

Sir,

Sub: Implementation of Order of Hon'ble High Court of [illegible] – Reg.

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Kind attention is invited your letter dated 15.07.2021 on the above [illegible] subject.

In this regard, it is informed that Commissioner of Customs [illegible] permission for provisional release of the cargo subject to furnishing [illegible] Bond for Rs.4,40,70,659/- (Rupees four crore forty lakh seventy thousand six hundred and fifty nine only).

Yours faithfully,

(TERKA[illegible])
DEPUTY COMMISSIONER OF CUSTOMS
[illegible]

Copy to :-
The Deputy Director,
Directorate of Revenue Intelligence,
Bangalore Zonal Unit,
No.3(P), 1st Stage, 3rd block HBR Layout,
43/opp.BDA Complex,
Kalyan Nagar,
[illegible]

In other words, aforementioned order was not carried in appeal by the Customs Department and on the contrary, this order has been duly complied with is learned Senior Counsel's say.

6. Mr.R.Aravindan, learned Senior Standing Counsel for Central Excise and Customs accepts notice on behalf of all the four respondents.

7. Owing to the narrow compass and the acute legal angle on which the captioned matter turns, with the consent of learned counsel on both sides captioned main writ petition was taken up. This is also owing to the emphasis made at the bar that the consignment is perishable and the value of the consignment is degenerating every day and there is a drop in the value of said consignment qua every passing day.

8. Learned Revenue counsel submits that this is a case where the

allegation against the writ petitioner is over valuation of said consignment to circumnavigate a notification which prohibits import of black pepper valued at less than Rs.500/- per Kilogram. Whether there is circumnavigation of notification qua this import is the subject matter of adjudication. Incidentally the import is by a Vessel by water from Sri Lanka. Show cause notice has been issued, adjudication is under way. As already alluded to supra, the office of the first respondent has made it clear that samples have been drawn investigation is under way and the consignment may not be required any more for further investigation. The release is also recommended by the fourth respondent-Customs Department. Moreover an earlier consignment imported by the same importer in March 2021 i.e., 37000 Kilograms of black pepper valued a little over INR 1.86 Crores was released. In this case also the purchase of black pepper was at Rs.505/- per Kilogram and the consignment was detained on allegations of overvaluation to get over notifications banning import of black pepper valued at less than Rs.500/- per Kilogram. Show cause notice was issued and adjudication is under way. This by itself douses the first point urged by learned Revenue counsel.

9. The next point urged is regarding security. It is seen from the order made by other Hon'ble Judge that there is a directive to quantify the duty / bond amounts forthwith communicate the same to the writ petitioner and thereafter release the goods within a week on such remittance by the writ petitioner. This is articulated in paragraph 14 of the order made by Hon'ble Single Judge. As far as the demurrage charges are concerned, the question has been left open. This is articulated in paragraph 15 of the earlier order. Therefore, if a similar order (the order which has been complied with by the Customs Department) in a similar case is made in the case on hand that would serve the ends of justice. To be noted, there is no disputation that the case on hand (factual matrix) is not any different qua W.P.No.12454 of 2021. In this view of the matter, I deem it appropriate to extract and reproduce the entire order in W.P.No.12454 of 2021 dated 14.07.2021 and the same reads as follows:

> *'Heard Mr.Vijay Narayan, learned senior counsel appearing for Dr.S.Krishnandh, learned counsel for the petitioner and Mr.K.Mohanamurali, learned Senior Panel Counsel for Customs Department/R1 to R4 and Mr.V.Sundareswaran, learned Senior Panel Counsel for the Directorate of Revenue Intelligence (DRI)/R5 & R6.*
>
> *2. This Writ Petition challenges, by way of certiorarified mandamus, communication dated 25.05.2021, which has been issued by R4/Deputy Commissioner of Customs conveying the decision of the Chief Commissioner of Customs rejecting the petitioner's request for provisional release of consignments of import of black pepper that have been seized vide seizure memo dated 03.04.2021. They also seek a direction to the respondents to release the*

goods provisionally in terms of Section 110A of the Customs Act 1962 (in short 'Act') and issue Demurrage-cum-Detention Waiver Certificate for waiver of Demurrage and Container Detention Charges, in respect of the said goods in terms of Section 6(1)(l) of Handling of Cargo in Customs Areas Regulations 2009 read with Regulation 10(1)(l) of Sea Cargo Manifest and Transhipment Regulations, 2018.

3. The petitioner has imported five consignments vide Bill of Entry Nos. 3185706 dated 17.03.2021, 3212240 dated 19.03.2021, 3256382 dated 23.03.2021, 3256389 dated 23.03.2021 and 3308760 dated 26.03.2021. The petitioner sought release of the consignments, both before the DRI as well as the authorities under the Customs Act, being the Commissioner of Customs as well as the Chief Commissioner of Customs. A detailed communication of the DRI dated 26.04.2021 indicates certain concerns that the DRI had entertained in regard to the consignments imported.

4. The crux of the litigation turns upon the valuation of the consignments in question, as Notification No.21/2015-20 dated 25.07.2018 (Notification in question) permits entry of black pepper falling under Entry No.0904 11 30 only if the CIF value of the import was Rs.500/- per kg or above. Imports of value less than Rs.500/- per kg is prohibited. It was the apprehension of the DRI that the goods have been over valued by the petitioner in order to render them freely importable, the word 'free' being used in the context of 'permitted to be imported', as the commodities are otherwise subject to duty at the rate of 8%.

5. Being of the view that the value of the consignments was in excess of what was the true value, investigation was undertaken by the DRI. The ongoing investigation takes note of various documents that appear to indicate that the pricing of the commodity was less than that revealed by the petitioner and also that full consideration had not been remitted to the supplier overseas. Moreover, the DRI states that it is in possession of information to the effect that sales of the consignments importer earlier had been undertaken by the petitioner in the open market at a sum less than the import value.

6. On the basis of the aforesaid material stated to have been gathered by the DRI, the apprehension that arose was that the goods had been consciously inflated in value merely to enable their import in terms of the Notification in question. This narration is captured in the communication of DRI dated 26.04.2021 issued to the Deputy Commissioner of Customs, wherein, in conclusion they say that investigation was under progress and that the report would be forwarded to the Customs Department, post completion. As far as release is concerned, the ball is placed in the court of customs, the DRI leaving it to the customs authorities to consider the request for release in terms of Section 110 A of the Act.

7. The final stand of the DRI however, as conveyed vide communication dated 15.04.2021, paragraph 2 is categoric to the effect that 'this office does not have any objection for provisional release of the said goods'. They continue to state at paragraph 3 that 'It is herein requested that the said goods may be provisionally released as per the conditions stipulated under section 110 A of Customs Act, 1962.'. Thus the DRI before whom the investigation is stated to be on-going in regard to the valuation of the goods has expressed no objection for the release of the same.

8. Based on the communication of the DRI dated 15.04.2021, the Deputy Commissioner/R2 on 05.05.2021 communicates to the petitioner that the request for provisional release was rejected by the adjudicating authority. There is some confusion as to who is the adjudicating authority in this case, as in the communications of the Deputy Commissioner of Customs, she merely refers to the rejection of request by the 'adjudicating authority' without specifying who that authority is. Petitioner before me is also unable to clarify this issue.

9. The request of the petitioner before the Chief Commissioner (who is not arrayed as a party before me) has been rejected and conveyed to the petitioner by the Deputy Commissioner under impugned order dated 25.05.2021. The order is cryptic and merely rejects the request stating that the import of the goods was prohibited as per the policy condition. It appears to me that the cart has been put before the horse, as admittedly investigation is presently on-going.

10. The crux of the apprehensions are as follows:

3. Investigation has revealed the following:

- The imports of Black Pepper from Sri Lanka by M/s Global Metro in controlled by Shri Arshad Shajahan.
- M/s Global Metro has imported black pepper by declaring the unit price in the range of Rs 501 to Rs. 512/kg. The terms of payment as per the Invoice in most cases is around 50% on DP/DAP terms i.e. Documents against Payment and balance on DA terms L.e. Documents against Acceptance. The time limit for making DA payment is 90 days to 120 days as per commercial Invoice.

- *The said importer has made payments to the overseas muppliers only to an extent of payment against DP terms as per the Commercial Invoice. However, he has not paid the balance amount to the overseas supplier even after the expiry of time period of 90-120 days. He has accepted all the imported Black Pepper without raising any objection with the overseas suppliers on quality issues, in sum, there is no reason recorded by M/s Global Metro to make the lower payments.*
- *As per the documents recovered such as Sales Contract, email communication recovered during the search of the premises of M/s Global Metro it is found that the actual unit price of Black Pepper imported by M/s Global Metro from Sri Lanka is between USD 3- USD 4 per Kg L.e. much below the declared unit price of Rs. 500 per Kg and less than the MIP specified in the FTP making the goods prohibited.*
- *On receipt of such imported black pepper from M/s Global Metro has sold them in the domestic market at a Unit price in the range of Rs. 300- Rs. 425/kg although the unit price of Rs. 502-Rs. 515/kg has been declared to the Customs authorities for the said imports.*
- *Further, the total value of import of Black Pepper by M/s Global Metro, as declared to Customs, for the period from May-2020 till date is around 31 Crores. However, it appears that M/s Global Metro has paid only around half of the said amount to their overseas suppliers of Black Pepper in Sri Lanka as per their Bank accounts Statements. Shri Arshad Shajahan of M/s Global Metro has confirmed in his statement that the balance amount to be paid to the Overseas Supplier would never be paid. The content of statement was corroborated by the documents found during investigation.*
- *The above facts have been evidenced by the analysis of bank statements, email communications, e-way bills and the informal accounts maintained by relevant entities.*

11. No details of incriminating material have been furnished that would substantiate the conclusion that the goods have been inflated in value. As far as the balance of the consideration remaining to be paid to the overseas supplier, this is a matter of negotiation between the supplier and the importer and would not concern the statutory authorities in the matter of valuation of the goods. There are also certain statements that appear to

have been recorded in the course of the on-going investigation. All in all, the apprehensions expressed are, as of now, just apprehensions, and would have to be supported by tangible material in order to establish a prima facie case against the petitioner.

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, 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 interests 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.

16. This Writ Petition is disposed as above. No costs. Connected Miscellaneous Petitions are closed.'

10. As already alluded to supra, paragraphs 14 and 15 are of relevance. There will be a similar order in the captioned main writ petition i.e., on the same line as paragraphs 14 and 15 in W.P.No.12454 of 2021 and therefore, the operative portion of the order in the case on hand is as follows:

a) 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. In other words, the show cause notice and adjudication will be carried to logical end on its own merits and in accordance with law.

b) The third respondent i.e., The Joint Commissioner of Customs is directed to quantify the duty, bond amounts, communicate the same to the petitioner forthwith and release the goods within a week of such remittance i.e., quantified duty / bond amounts by the petitioner.

c) 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.

11. Though obvious, it is made clear that I have not expressed any opinion or view on the adjudication that is under way. The question as to the actual value of the imported consignments is to be adjudicated separately as per Customs Act, 1962 and the instant order has been made perambulating within the perimeter of Section 110A of Customs Act, 1962.

12. Captioned writ petition is disposed of in the aforesaid manner. Consequently, captioned WMP is disposed of as closed. There shall be no order as to costs.

Sd/-
Assistant Registrar

// True Copy //

/ /2021
Sub Assistant Registrar(CS)

To

1. The Deputy Director,
Directorate of Revenue Intelligence,
No.8 (P), 1st Stage, 3rd Block,
Bengaluru – 560 068.

2. The Commissioner of Customs,
Custom House,
New Harbour Estate,
Turicorin – 628 004.

3. The Joint Commissioner of Customs,
Custom House, New Harbour Estate,
Turicorin – 628 004.

4. The Assistant Commissioner of Customs (SIIB),
   Custom House,
   New Harbour Estate,Turicorin – 628 004.

+1 cc to M/S.ISSAC CHAMBERS, Vide SR.No.37258

W.P.[MD]No.21469 of 2021
and
W.M.P(MD).No.18038 of 2021
Date:03.12.2021

SA (03.12.2021) 12P 6C