

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1393 OF 2022

M/s. Onyx Impex	...	Petitioner
V/s.		
Union of India & Ors.	...	Respondents

.....
Dr. Sujay Kanthawala with Mr. R. K. Dudani, Mr. Sujit Sahoo, Mr. Aditya Talpade, Mr. Mahadeo Londhe, Advocate for the Petitioner.

Mr. P. S. Jetly, Senior Advocate a/w. Ms. Sangeeta Yadav, Advocate for the Respondents.

**CORAM : S. V. GANGAPURWALA &
VINAY JOSHI, JJ.**
DATED : 21st MARCH 2022.

P.C.

1. The petitioner has initially filed this writ petition challenging the letter dated 11th February 2022. During the pendency of writ petition, the seizure memo was received by the petitioner. The same is also assailed in the writ petition.

2. The learned Advocate for the petitioner strenuously contends that the entire procedure has been followed while importing the dates from UAE. All the documents on record unequivocally referred to that the product is purchased from UAE. The certificate of the government authorities and the bills unambiguously prove that the produce is imported by the petitioner from UAE. The fumigation certificate is also issued by the government authority of UAE. There is no iota of

evidence even to remotely establish that the dates are produced in Pakistan and that the same are imported from Pakistan via UAE as contended by the respondents. Only on the basis of 17 labels that too in a torn condition, the respondents are assuming that the dates originated from Pakistan. The learned Advocate for the petitioner submits that petitioner has paid the customs duty. It is impossible for the petitioner to pay 200% duty. The products are worth about 27,00,000/- and odd and the respondents are demanding Rs.56,00,000/- and odd amount from the petitioner.

3. The learned Senior Advocate for the respondents submits that dates in question imported are of Pakistan. They are imported from Pakistan via UAE. To buttress his submission, the learned Senior Advocate refers to some of the aspects as stated in the affidavit-in-reply.

4. It would not be possible in the writ jurisdiction under Article 226 of the Constitution to embark upon the disputed question on facts. The investigation is still in progress. The respondents are relying upon some material to suggest that the dates originated in Pakistan and have been imported from Pakistan via UAE. Commenting upon the factual aspect at this stage would be preempting the investigation. The same would not be permissible. The factual matrix is dealt in the affidavit-in-reply by the respondents to substantiate its contentions.

5. Be that as it may, the same would be subject matter of the investigation and it would not be possible for us to conclusively pass an order in that regard at this stage.

6. The learned Advocate for the petitioner in alternate submits that the petitioner be allowed to re-export the said dates. The petitioner may make an application in that regard to the respondent Authority. The respondent Authority shall dispose of the said application on its own merits and in accordance with law and policy preferably within seven days from the date of receipt of the application.

7. With the aforesaid observations and directions, the writ petition is disposed of. No costs.

8. Considering that the item is perishable one, the petitioner shall make an application for the product being kept in a conducive environment. The respondent shall positively consider the said application.

(VINAY JOSHI J.)

(S. V. GANGAPURWALA J.)

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