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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.Nos.3601 & 3603 of 2022

M/s.Mundhra Agro Foods LLP.,
Rep. by its Managing Partner
Mr.Ashish Mundhra,
No.83, N.S.C.Bose Road,
Park Town, Chennai - 600 001.
... Petitioner is all WPs

Vs.

1. The Additional Commissioner of Customs-Imports,
Group I, Chennai - II, Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

2. The Additional Director General,
Directorate of Revenue Intelligence,
Chennai Zonal Unit,
27, G.N.Chetty Road,
T.Nagar, Chennai - 600 017.

3. The Senior Intelligence Officer,
Directorate of Revenue Intelligence,
Chennai Zonal Unit,
27, G.N.Chetty Road,
T.Nagar, Chennai - 600 017.

(R2, R3 impleaded vide order
dated 28.03.2022 made in
W.M.P.Nos.4650/22 & 4648/22
in W.P.Nos.3601 & 3603 of 2022)
... Respondents in all WPs

Prayer in W.P.No.3601 of 2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondent to permit the petitioner to re-export the goods covered under the Bill of Entry Nos.6543898 dated 05.12.2021 consisting 5 containers bearing No.CCSU9864574, OBLU4004177, FSCU6372046, PCIU8244301 & FSCU6455520, within a stipulated time, that were seized under Mahazar dated 03.02.2022 and also to waive the charges towards demurrage and container

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detention charges, considering the petitioner's representation dated 07.02.2022.

Prayer in W.P.No.3603 of 2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the 1st respondent to permit the petitioner to re-export the goods covered under the Bill of Entry Nos.6543865 dated 05.12.2021 consisting 5 containers bearing No.ELCU2103003, ELCU2103195, GCIU4512264, HALU5604283 and HALU5604621, within a stipulated time, that were seized under Mahazar dated 07.02.2022 by waiving the charges towards demurrage and container detention charges, considering the petitioner's representation dated 11.02.2022.

For Petitioner (in both WPs)	:	Mr.M.Murali Kumaran for M/s.MCGAN Law Firm
For R1 (in both WPs)	:	Mr.Rajnish Pathiyil Senior Panel Counsel
For R2 & R3 (in both WPs)	:	Mr.V.Sundareswaran Senior Standing Counsel

COMMON ORDER

The petitioner is an importer under Bill of Entry dated 05.12.2021. He has imported the goods called Areca Nuts from a foreign soil. The goods were intercepted and seized by the Customs by proceedings dated 17.03.2022.

2. The case of the customs is that they are prohibited goods, therefore investigation followed by adjudication has to be undertaken, then only it has to be decided whether the goods have to be confiscated or otherwise.

3. In the meanwhile, the petitioner has approached this Court by filing these two writ petitions with a prayer seeking for a mandamus from this Court to the respondent to permit the petitioner to re-export the goods.

4. Heard Mr.N.Murali Kumaran, learned counsel for M/s.MCGAN Law Firm, appearing for the petitioner, who would submit that when similar goods were imported by another importer called M/s.Unik Trader, the issue as to whether that the importer can be permitted to re-export the goods was considered by this Court in W.P.No.24062 of 2021, where a learned Judge of this Court in the case of [M/s.Unik Traders Vs. The Additional Commissioner of Customs and Others.], passed an order dated 29.11.2021, wherein the following directions have been given:

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> "91. Since the imported goods are natural products and are prone to deterioration due to exposure to elements and natural causes with efflux of time and humid & inclement weather condition in Chennai and are lying at Balmer Lawrie CFS, Chennai since the end of September, 2021 the 1st and the 2nd respondents and/or such other officers vested with the powers to assess the Bills of Entries are directed to exercise their powers under the Customs Act, 1962 one way or the other.
>
> 92. The initial exercise regarding the determination of classification may be completed within 15 days from the date of hosting of this Order in the website. In case, the "proper officer" is of the primafacie view that the goods are liable for confiscation, seizure order may be issued followed by confiscating the imported goods if they are found to be prohibited in terms of the Notification of the Commerce Ministry. If not, the imported goods can be allowed to be redeemed. This should be decided within a period of 30 days thereafter. The proper officer shall bring a closure to the issue one way of the other within a period 30 days thereafter after duly following the safe guards under the Customs Act, 1962 and principle of natural justice. The petitioner may be given an option to re-export the imported goods if they are held to be prohibited goods to mitigate the loss of the petitioner. This observation is without prejudice to any penalty that may be imposed if the circumstances so warrant.
>
> 93. This writ petition stands disposed with the above observations. No costs."

5. Relying upon this decision, learned counsel appearing for the petitioner would submit that since the petitioner is also similarly placed and the goods are one and the same, the same benefits can be extended for the petitioner by giving a direction to the respondents/Customs to complete the process of confiscation and even if they ultimately found that the goods imported by the petitioner are prohibited, a chance for re-exporting the said goods may be given to the petitioner as directed in the earlier case referred to above, he contended.

6. However, Mr.Rajinish Pathiyil, learned Senior Panel Counsel appearing for the 1st respondent/Customs, would submit that under Section 125 of the Customs Act, it is purely the discretion of the authority concerned to decide whether the re-export or redeeming permission can be given to the exporter, if they are prohibited goods.

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7. Such kind of discretion cannot be expected to be exercised only in favour of the importer in case of the prohibited goods, therefore, there is vast difference between the prohibited goods and other goods. Such kind of power to permit the importer to re-export the goods is solely since vested with the Officer concerned, who conduct the investigation and complete the adjudication, such kind of direction by way of mandamus as sought for by the petitioner in this case cannot be granted, he contended.

8. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials on records.

9. As has been rightly pointed out by the learned counsel appearing for the petitioner, the same goods since was imported when the petitioner in the said case in M/s.Unik Traders referred to above was placed in the same position, the issue had been decided by the decision of the learned Judge in the said case of M/s.Unik Traders by order dated 29.11.2021, where considering the facts and circumstances of the case, the learned Judge had given the said direction, where a time bound direction was given to the respondent/Customs to complete the procedure pending with the confiscation proceedings and even if the goods are to be confiscated by declaring it as prohibited goods, even then by using the discretion in the word occur in Section 125 of the Customs Act,1962, the respondent Customs can give an option to the petitioner/importer to re-export the imported goods.

10. The said proposition held in the case of M/s.Unik Traders can very well be applied in the present facts of the case. Therefore, I am of the view that the said benefit can be extended to the present petitioner also.

11. Accordingly, these writ petitions are disposed of with the following orders:

> (i) That there shall be a direction to the respondent/Customs to classify the goods in question and ultimately if they found that the goods in question is a prohibited item, which requires a confiscation, that procedure also can be completed by the Customs and thereafter, an option can be given to the petitioner to re-export the same after collecting whatever confiscation fee, penalty, etc., as provided under the Customs Act.
>
> (ii) These procedures as indicated above shall be completed with the co-operation of the petitioner

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within a period of 30 days from the date of receipt of a copy of this order and thereafter, an order with regard to re-export can be passed by the respondent.

12. With these directions, both the Writ Petitions are disposed of. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mp/sp

To

1. The Additional Commissioner of Customs-Imports,
   Group I, Chennai – II, Commissionerate,
   Custom House, No.60, Rajaji Salai,
   Chennai – 600 001.

2. The Additional Director General,
   Directorate of Revenue Intelligence,
   Chennai Zonal Unit, 27, G.N.Chetty Road,
   T.Nagar, Chennai – 600 017.

3. The Senior Intelligence Officer,
   Directorate of Revenue Intelligence,
   Chennai Zonal Unit, 27, G.N.Chetty Road,
   T.Nagar, Chennai – 600 017.

+1cc to Mr.Rajnish Pathiyil, Advocate, S.R.No.22931
+2ccs to M/s.MCGAN Law Firm, Advocate, S.R.No.22840
+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.22668

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