IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2022

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

WP.Nos.11942, 12474, 12477, 8604, 11260, 11277,
11414, 11662, 12473 & 13314 of 2022
and
WMP Nos.13829, 13832, 10948, 13836, 8518,
10822, 10839, 11130, 11361 & 12584 of 2022

M/S. BLUE VISTA INTERNATIONAL LTD.
REP. BY ITS DIRECTOR
MR.SUJEET KUMAR MAWANDIA,
HAVING CORPORATE OFFICE AT
PS AVIATOR, 3RD FLOOR, UNIT-304
AFGHARA, NEW TOWN,
KOLKATA-700 136
...PETITIONER in WP No.11942 of 2022

M/S. R.R.RESIDENCY
12, 2ND MAIN ROAD,
SHENOYNAGAR WEST,
CHENNAI 30.
REPRESENTED BY ITS PRORIETRIX
MRS.R.RAJARAJESWARI
...PETITIONER in WP No.12474 of 2022

M/S.CADILLAC INTERNATIONAL,
XI/399C CADILLAC INTERNATIONAL,
NEDUMTHODE MUDIKAL, KERALA- 683 547
REPRESENTED BY ITS PARTNER
MR. RIYAZ PAREED ...PETITIONER in WP No.12477 of 2022

M/S.GLOWMART INC.
NO.P2 6TH FLOOR LUNARS GARDENIA ,
DREAM VALLEY ROAD,
SHIRIDA SAI NAGAR,
MANIKONDA,
TELANGANA 500 089. ...PETITIONER in WP No.8604 of 2022

M/S.SARVESHWARI INDUSTRIES,
REP BY ITS PROPRIETOR,
MR KAMAL AGARAWAL
353, BMK GIRI NAGR ALKAJI,
NEW DELHI 110 019.
...PETITIONER in WP No.11260, 11277, 11414, 11662 of 2022

M/S.J.B.ENTERPRISES,
102 ANGAPPA NAICKEN STREET MANNADY,
CHENNAI -600 001.
REPRESENTED BY ITS PROPRIETOR,
MR.J.BASHEER AHMED
...PETITIONER in WP No.12473 of 2022

M/S.SPARSH TRADING,
REP. BY ITS PROPRIETOR
MR. JIJOR. K.A.,
40/366A, ANJAPALAM KODUNGALLUR,
THRISSUR,
KERALA- 680 664. ...PETITIONER in WP No.13314 of 2022

-Vs-

1. THE COMMISSIONER OF CUSTOMS,
   GROUP-I CHENNAI-II COMMISSIONERATE,
   CUSTOMS HOUSE,NO.60 RAJAJI SALAI,
   CHENNAI-600 001.

2. THE ADDITIONAL COMMISSIONER OF CUSTOMS (IMPORTS)
   GROUP-I CHENNAI-II
   COMMISSIONERATE, CUSTOMS HOUSE,
   NO.60, RAJAJI SALAI, CHENNAI-600 001.

3. THE ADDITIONAL COMMISSIONER OF CUSTOMS (SIIB),
   CUSTOM HOUSE,
   NO.60,RAJAJI SALAI, CHENNAI-600 001.

4. THE ASSISTANT / DEPUTY COMMISSIONER OF CUSTOMS,
   GROUP-I CUSTOM HOUSE, NO.60 RAJAJI SALAI,
   CHENNAI-600 001.

...RESPONDENTS in WP No.11942,11260,11277, 11414,11662 and 13314 of 2022

1. THE ASSISTANT COMMISSIONER OF CUSTOMS,
   GROUP-I CHENNAI-II CUSTOMS COMMISSIONERATE,
   CUSTOMS HOUSE, NO.60 RAJAJI SALAI,
   CHENNAI-600 001.

2. THE ADDITIONAL COMMISSIONER OF CUSTOMS (IMPORTS)
   GROUP-I CHENNAI-II
   COMMISSIONERATE, CUSTOMS HOUSE,
   NO.60, RAJAJI SALAI, CHENNAI-600 001.

3. THE ASSISTANT DIRECTOR OF DRI,
   CHENNAI ZONAL UNIT 27,
   G.N.CHETTY ROAD,
   T.NAGAR, CHENNAI 17.

...RESPONDENTS in WP No.12474, 12477, 12473 of 2022

1. THE ADDITIONAL COMMISSIONER OF CUSTOMS,
COMMISSIONERATE IV, CUSTOMS HOUSE,
NO.60, RAJAJI SALAI, CHENNAI-600 001.

2. THE DEPUTY COMMISSIONER OF CUSTOMS,
COMMISSIONERATE-IV, CUSTOM HOUSE
NO.60 RAJAJI SALAI, CHENNAI 600 001.

3. THE ASSISTANT COMMISSIONER OF CUSTOMS,
M/S. ENNORE CARGO CONTAINER
TERMINAL PRIVATE LIMITED,
CONTAINER FREIGHT STATION,
CHENNAI 601 203.

4. EXAMINING OFFICER,
OFFICE OF THE DEPUTY/ ASSISTANT
COMMISSIONER OF CUSTOMS,
M/S. ENNORE CARGO CONTAINER TERMINAL PRIVATE LIMITED,
CONTAINER FREIGHT STATION , CHENNAI 601 203.

5. DIRECTORATE OF REVENUE INTELLIGENCE,
CHENNAI ZONAL UNIT,
M27 G.N. (CHETTY) ROAD, T.NAGAR CHENNAI 17.
REP. BY ITS ASSISTANT DIRECTOR

...RESPONDENT in WP No.8604 of 2022

Prayer in WP No.11942 of 2022: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents herein to Assess and Release the goods viz., 54,000 Mts., viz., 675 Bags of Betel Nut Product known as (Unflavoured Supari) of Indonesia Origin imported from The Republic of Indonesia vide Bill of Entry No. 7667115, dated 27.02.2022, totally valued at USD 81,000.00 for 54,000 Mts

Prayer in WP No.12474 of 2022:Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, Direct the 1st respondent herein to forthwith release the goods viz. Betel Nut products known as supari (unflavoured supari) imported by the petitioner herein under B.E. No. 7666980 dated 27.02.2022 pursuant to the orders of assessment dated 28.02.2022 passed by the 1st respondent in exercise of his statutory powers conferred under Sec. 17 of the customs Act accepting the classification of the impugned goods under Customs Tariff sub heading no. 21069030 and determining the duty payable on the said goods

Prayer in WP No.12477 of 2022:Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, direct the 1st respondent herein to forthwith release the goods viz. Betel Nut products known as supari (unflavoured supari) imported by the petitioner herein under B.E. Nos.7667002 dated 27.02.2022 and 7694749 and 7694794 both dated 01.03.2022 pursuant to the orders of assessment dated 28.02.2022 and 03.03.2022 passed by the 1st respondent in exercise of his statutory powers conferred under Sec. 17 of the customs Act accepting the classification of the impugned goods under Customs Tariff sub heading no. 21069030 and determining the duty payable on the said goods

Prayer in WP No.8604 of 2022:Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the seizure Memorandum bearing F.No. S.MISC.01/ 2022- ECCT CFS dated 17.03.2022 issued by the 4th respondent and to quash the same as arbitrary and illegal and release the perishable imported consignment of 164.400 MT of Unflavored Supari (Betel Nut Product) valued at dollar 246,600/- (United States Dollar Two Hundred and Forty six Thousand six Hundred only) covered under Bill of Entry No. 7666972 dated 27.02.2022

Prayer in WP No.11260 of 2022:Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, Directing the respondents herein to Assess and Release the goods viz., 80.00 MTs., viz., 1000 Bags of unflavoured supari (betel Nut product kown as supari) of Indonesia origin imported from the Republic of Indonesia vide Bill of Entry No.7667155, dated 27.02.2022 totally valued at USD 120,000.00 for 80.00MTS

Prayer in WP No.11277 of 2022:Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, Directing the respondents herein to access and release the goods viz., 80.00 Mts., Viz., 1000 Bags of Unflavoured Supari (Betel Nut Product known as Supari) of Indonesia Origin imported from the Republic of Indonesia vide Bill of Entry No.7667140 dated 27.02.2022 totally valued at USD 120,000.00 for 80.00 Ts

Prayer in WP No.11414 of 2022:Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents herein to Assess and Release the goods viz., 1014 Bags, viz. 81.12 MTs. of Betel Nut Product known as Supari (unflavoured Supari) of Myanmar Origin unflavoured supari imported from the Republic of the Union of Myanmar imported vide Bill of Entry No. 7667196 dated 27.02.2022 totally valued at USD 133230/- (FOB) for 81.12 MTs

Prayer in WP No.11662 of 2022:Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, Directing the respondents herein to Assess and Release the goods Viz., 1014 Bags, Viz., 81.12 MTs., of Betel Nut Product known as Supari (Unflavoured Supari) of Myanmar Origin unflavoured Supari imported from The Republic of the Union of myanmar imported vide

Bill of Entry No. 76679282, dated 27.02.2022, totally valued at USD 133230/- (FOB) for 81.12 MTs

Prayer in WP No.12473 of 2022:Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, Direct the 1st respondent herein to forthwith release the goods viz. Betel Nut products known as supari (unflavoured supari) imported by the petitioner herein under B.E. Nos. 766776, 7667189, 7667191 and 7667167 all dated 27.02.2022 pursuant to the orders of assessment dated 01.03.2022 passed by the said respondent in exercise of his statutory powers conferred under Sec. 17 of the customs Act accepting the classification of the impugned goods under Customs Tariff sub heading no. 21069030 and determining the duty payable on the said goods

Prayer in WP No.13314 of 2022:Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents herein to release the goods viz., 450 Bags viz., 27.00 MT of Betel Nut Product known as Supari (Unflavored Supari) of Indonesia Origin imported from The Republic of Indonesia vide Bill of Entry No. 7556493 dated 18.02.2022 Classifiable under CTH 21069030 and totally valued at USD 34,500 (FOB) for 27.00 MT and further direct the respondents to issue Waiver Certificate for Detention and Demurrage Charges under Regulations of Handling of Cargo in Customs Areas Regulations 2009

For Petitioner	For Respondents	WP.Nos.
Mr.A.K.Jayaraj	Mr.V.Sundareswaran, Senior Panel Counsel	WP.Nos.11942, 11260, 11277, 11414, 11662, 13314 of 2022
Mr.N.Viswanathan	Mr.V.Sundareswaran, Senior Panel Counsel	WP.Nos.12473, 12474 & 12477 of 2022
Mr.Vijay Narayan, Senior Counsel for Mr.Thomas T. Jacob	Mr.V.Sundareswaran, Senior Panel Counsel	WP.No.8604 of 2022

COMMON ORDER

The respondents in all cases are the Customs authorities. The Directorate of Revenue Intelligence has filed Miscellaneous Petitions in WMP.Nos.13829, 13832 & 13836 of 2022 seeking to implead themselves as necessary parties. However, after some discussion and in the nature of the order proposed to be passed, I feel that the presence of the DRI in this matter at this juncture is unnecessary. Hence, the petitions for impleadment are not entertained.

2.This batch of writ petitions has been filed by importers, according to them, of unflavoured Supari (Betal Nut Product) ('goods in question'), from various countries. The consignments had all been imported on 27.02.2022. In one batch of writ petitions, that is in WP.Nos.11942, 11260, 11277, 11414, 11662, 13314 of 2022 and WP.No.8604 of 2022, the petitioners have been served with seizure memoranda issued by the 4th respondent intimating the petitioners that the consignments have been seized.

3.In WP.Nos.12473, 12474 & 12477 of 2022, the petitioners would deny receipt of seizure memoranda, but are before the Court insofar as their consignments have also, admittedly, been seized.

4.Some of the petitioners have filed applications for provisional release of the consignments under Section 110A of the Customs Act, 1962 (in short 'Act') on the following dates:

Sl. No.	WP.Nos.	Company Name	Date
1.	11414 of 2022	M/s.Sarveshwari Industries	19.04.2022
2.	11277 of 2022	M/s.Sarveshwari Industries	18.04.2022
3.	13314 of 2022	M/s.Sparsh Trading	09.05.2022
4.	11662 of 2022	M/s.Sarveshwari Industries	19.04.2022
5.	11260 of 2022	M/s.Sarveshwari Industries	18.04.2022
6.	11942 of 2022	M/s.Blue Vista International Limited	19.04.2022
7.	8604 of 2022	M/s.GlowMart Inc.	26.03.2022

5. The prayers of the petitioners are either for quash of the seizure memoranda issued by the 4th respondent and release of the perishable imported consignment of unflavoured supari (Betel Nut Product) or for a mandamus directing the respondents herein to assess and release the goods in question.

6.The Customs Tariff classifies ‘Areca nuts’ under 0802/Chapter-8 Entry 0802 80 as follows:

'0802 80	- Areca nuts :			
0802 80 10	- Whole	kg	100%	90%
0802 80 20	- Split	kg	100%	90%
0802 80 30	- Ground	kg	100%	90%
0802 80 90	- Other	kg	100%	90%

The stand of the revenue is that all the consignments imported would fall within the above classification.

7.Per contra, the stand of the petitioners is that their consignments fall under Chapter-21 under the entry 2106 being 'Food preparations not elsewhere specified or included' reading as follows:

'2106		
2106 10 00	-Protein concentrates and textured protein substances	kg.40%
2106 90	- Other	
	- Soft drink concentrates:	
2106 90 11	- Sharbat	kg.150%
2106 90 19	- Other	kg.150%
2106 90 20	- Pan masala	kg.150%
2106 90 30	-Betel nut product known as "Supari"	kg.150%'

8.In terms of Notification No.20/2015-2020 dated 25.07.2018, the Director General of Foreign Trade has held that all products falling under Chapter-8 are freely importable subject to the condition that the import value is Rs.251/- and above per kilogram CIF. Admittedly, the commodities in all consignments in the present cases, are valued at less than Rs.251/- per kg. Thus, and assuming that the commodities in question were held to fall under the sweep of Chapter 8, they would be categorised as 'prohibited goods' as per Notification No.20/2015-2020.

9. The issue to be decided by the authority is thus one of classification, as to whether the products fall under Chapter 8 satisfying the definition of whole/split/ground/any other form of Areca nut or Chapter 21, being, betal nut product known as supari.

10.Though the DRI has not been impleaded, Mr.V.Sundareswaran, who is present, assists the Court, circulating a sample of the product that he states has been seized in the case of the writ petitioner in WP.No.8604 of 2022.

11. Though there is nothing to indicate that this is indeed the product that has been seized, I have called for, and have been furnished the records of proceedings in No.DRI/CZU/VIII/4B/ENQ-1/INT-09/2022 (relating to the petitioner in W.P.No.8604 of 2022) and record the deliberations in this regard

as well for compilation of this order.

12. One of the photographs of the seized consignment is extracted below:

13. Upon a comparison of the language of Chapter-8 and Chapter-21, I note that Chapter-21 is a chapter dealing with residuary food products and includes Supari. In my understanding, ‘supari’, refers to coarsely cut pieces of areca nut that are edible/ingestible. The product featured in the picture extracted above, comprises split areca nuts that have not been softened for consumption. It is thus, prima facie, moot as to whether the above product could be categorized/ utilized/understood to be ‘supari’.

14.Learned counsel for the petitioners point out at this juncture, that all of them are in possession of certificates from the Food Safety and Standards Authority of India and thus the products imported by them are edible and conform to food safety standards. These are questions of facts that are best left to the assessing authorities to deliberate upon, and decide with the assistance of the petitioners.

15.No doubt, the provisions of Section 110A provide for provisional release upon terms to be imposed by the authority. However, the provisions of Section 125, that deals with 'option to pay fine in view of confiscation' provides for two situations. In the case of confiscation of prohibited goods, the option to pay fine in lieu of confiscation is discretionary, such discretion to be exercised by the authority.

16. It is only in the case of other goods, that are not prohibited, that the Officer ‘shall’ offer to the owner or the person from whose possession the goods were seized, an option to pay a fine, in lieu of confiscation. Thus, in the case of prohibited goods, the discretion as to whether fine may be imposed in lieu of confiscation is that of the officer concerned.

17. Having said so, it is incumbent upon the authority to be prompt in exercise of such discretion, particularly in the case of perishable goods such as the commodity in question. The consignments are in the Customs Station since February 2022 and have been exposed to inclement weather and the vagaries of nature.

18.Though some of the petitioners have already made applications for provisional release under Section 110A of the Act, they wish to update their representations in view of events that have transpired in the recent past. This includes reference to an order of the Principal Commissioner, ordering provisional release under Section 110A, in circumstances that the petitioners state are identical to theirs. A copy of such order dated 07.05.2022 has been placed at page-23 of Additional set of documents dated 09.06.2022, filed in WP.No.12473 of 2022.

19. In the case of Unik Traders, an order-in-original had come to be passed on 28.01.2022 adverse to the petitioners classifying their consignments under Chapter-8. This order had come to be reversed by the Appellate Authority on 03.03.2022, wherein at paragraph-7, the Officer states as follows:

> '7. From the above discussions, I find that the adjudicating authority has denied the re-testing of the impugned goods to avoid delay in order to comply the Hon'ble High Court of Madras direction. However in the present circumstances where the FSSAI, Mumbai test report is in contradiction to the CRCL Lab and the request made by the appellant in view of grounds of appeal cited above I find it is necessary to re-test the impugned goods in the jurisdictional FSSAI. Therefore, I remand the case to the adjudicating authority for retesting of the impugned goods in the jurisdictional FSSAI lab. Since, the principles of natural justice has not been followed, the adjudicating authority may re-examine the matter afresh and pass appropriate orders as deemed fit. As the cargo is perishable in nature and since the cargo is already provisionally assessed under Sec. 18 of Customs Act, 1962 by the proper officer the cargo may be released immediately subject to the outcome of FSSAI report. To protect the interest of revenue, the adjudicating authority is directed to decide the case within 60 days after following the principles of natural justice.'

20. It is pursuant to the above order, that order dated 07.05.2022 has come to be passed releasing the consignments of the goods in question, in that case. Thus, in light of the

discussion as above, all petitioners are permitted to make applications for provisional release under Section 110A and such applications as/if and when received shall be disposed by the adjudicating authority after hearing the petitioners and simultaneous with a prima facie determination of the classification of the commodity in each case, within a period of two (2) weeks from date of receipt of the applications.

21. In directing a prima facie classification as above, this Court has taken note of the spirit and intention of Circular No.22/2004-Cus. dated 03.03.2004 that reads as follows:

'Circular No.22/2004-Cus., dated 3.3.2004
F.No.450/115/2003-Cus.IV

Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject: Delay in release of consignments due to classification disputes,seizure and provisional release thereof - Regarding.

I am directed to say that the trade has represented to the Board that the items involved in classification disputes should not be withheld but should be released by resorting to provisional assessment.

2.The matter has been examined by the Board. It may be mentioned that in case of classification disputes, by & large, option is given for provisional clearance/ assessment, if the inquiries are going to take time. However, the Board desires that a disputed or offending consignment should also not be held up unless its import/clearance is totally prohibited or banned under any law for the time being in force [E.g. PFA, CITES, Weight & Measures Act, etc.] or where prosecution is contemplated. At most, samples should be drawn and consignment should be allowed to be cleared on provisional basis as a matter of right. This will prevent congestion at ports and warehouses. Adequate B.G./security may be taken to safeguard revenue (including possible fine and penalty). In case where it is decide to detain the consignment action should be taken to shift the same to a Customs Warehouse under Section 49 of the Customs Act, 1962 [Board's Circular No.84/95-Cus., dated 25-7-95 may be referred to - 1995 (79) E.L.T. T-12].

3.Kindly bring the above instructions to the knowledge of all concerned.

4. Hindi version will follow.'

22.With the above directions, these writ petitions are disposed. No costs. Connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vs

To

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

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

3. The Additional Commissioner of Customs (SIIB),
   Custom House, No.60, Rajaji Salai,
   Chennai-600 001.

4. The Assistant / Deputy Commissioner of Customs,
   Group-I, Custom House,
   No.60, Rajaji Salai, Chennai-600 001.

5. The Assistant Director of DRI,
   Chennai Zonal Unit,
   27, G.N.Chetty Road, T.Nagar,
   Chennai – 17.

6. The Deputy Commissioner of Customs,
   Commissionerate-IV, Custom House
   No.60 Rajaji Salai, Chennai 600 001.

7. The Assistant Commissioner of Customs,
   M/s. Ennore Cargo Container Terminal Private Limited,
   Container Freight Station,
   Chennai 601 203.

8. Examining Officer,
   Office of the Deputy/ Assistant Commissioner of Customs,
   M/s. Ennore Cargo Container Terminal Private Limited,
   Container Freight Station , Chennai 601 203.

9. The Assistant Director
Directorate of Revenue Intelligence,
Chennai Zonal Unit,
M27 G.N. (Chetty) Road,
T.Nagar Chennai 17.

+3cc to M/s.N.Viswanathan, Advocate, S.R.No.34656

+6cc to M/s.A.K.Jayaraj, Advocate, S.R.Nos.34652, 34650,
34653,34651, 34648, 34649

+2cc to M/s.V.Sundareswaran, Advocate, S.R.Nos.34657, 34658

+1cc to M/s.Thomas T.Jacob, Advocate, S.R.No.34941

+1cc to M/s.Hema Muralikrishnan, Standing Counsel, S.R.No.35017

WP.Nos.11942, 12474, 12477, 8604, 11260, 11277,
11414, 11662, 12473 & 13314 of 2022 and
WMP Nos.13829, 13832, 10948, 13836, 8518,
10822, 10839, 11130, 11361 & 12584 of 2022

RP(CO)
RGA(12/07/2022)