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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2022

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

WP.Nos.16260 and 16267 of 2022

and

WMP Nos.15604 and 15608 of 2022

M/s.Dry Nut Enterprises
Rep. by its Partner Mr.Vikas Walia
2204, First Floor, Gali Hinga Beg,
Tilak Bazar, Delhi - 110 006.

... Petitioner in both W.Ps

Vs

1. The Commissioner of Customs,
Group-I, Chennai-II Commissionerate,
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.
2. The Commissioner of Customs,
Chennai-IV Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai-600 001.
3. The Additional Commissioner of Customs,
Chennai-IV Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai-600 001.
4. The Additional Commissioner of Customs (Imports),
Group - I, Chennai = II Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai-600 001.
5. The Joint/Additional Director
Directorate of Revenue Intelligence,
Chennai Zonal Unit, 27, G.N.Chetty Road,
T.Nagar, Chennai - 600 017.

... Respondents in both W.Ps

Common Prayer: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., 675 Bags viz., 54,000 Mts., and 1013 bags viz., 81.000 Mts., of Betel



Nut Products (known as (Supari Unflavoured) respectively Cutting of Indonesia Origin imported from The Republic of Indonesia vide Bill of Entry Nos.7667388, 7667284, dated 27.02.2022, respectively classifiable under CTH 21069030 and totally valued at USD 81,000.00 (CIF) for 54,000 Mts and USD 121,500.00 (CIF) for 81.000 Mts respectively 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.

In both W.Ps.

For Petitioner : Mr.A.K.Jayaraj

For Respondents: Mrs.R.Hemalatha

Senior Standing Counsel - R1 to R4

Mr.V.Sundareswaran

Senior Panel Counsel - R5

C O M M O N O R D E R

Mrs.R.Hemalatha, learned Senior Standing Counsel accepts notice for R1 to R4 and Mr.V.Sundareswaran, learned Senior Panel counsel accepts notice for R5. All learned counsel would submit that the issue that arises in these matters has been considered by this Court on 13.06.2022 in a batch of Writ Petitions in W.P.Nos.11942 of 2022 etc. batch.

2. The petitioner seeks a mandamus directing the respondents to release the goods viz., 675 Bags viz., 54,000 Mts., (W.P.No.16260 of 2022) and 1013 bags viz., 81.000 Mts., (W.P.No.16267 of 2022) of Betel Nut Products (known as (Supari Unflavoured) imported from Indonesia vide Bill of Entry Nos.7667388 (W.P.No.16260 of 2022) and 7667284 (W.P.No.16267 of 2022), both dated 27.02.2022, classifiable under CTH 21069030 and totally valued at USD 81,000.00 (CIF) for 54,000 Mts and USD 121,500.00 (CIF) for 81.000 Mts 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.

3. The relevant portions of order dated 13.06.2022 read as follows:

'14. 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.

15. 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.

16. 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.

17. 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.

18. 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



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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.'

19. 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.

20. 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





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+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.41323

+1cc to Mrs.R.Hemalatha, SSC, S.R.No.41602

+2ccs to Mr.A.K.Jayaraj, Advocate, S.R.No.41158

WP.Nos.16260 and 16267 of 2022 and
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NSK/06/07/2022