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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.04.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD).No.8916 of 2022

M/S.Mahadev Enterprises,
represented by its Proprietor,
Shri Sohil Suchak,
No.31A, W.No.39, Maskasath,
Kirana Bazar,
Itwari, Nagpur 440 002. ... Petitioner

Vs.

1.Assistant Commissioner of Customs-Imports,
Custom House,
New Harbour Estate,
Tuticorin 628 004.

2.The Additional Commissioner of Customs-Imports,
Custom House,
New Harbour Estate,
Tuticorin 628 004. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to permit the petitioner to re-export the goods, namely, Unflavored Supari (Betelnut Pro6duct) classifiable under ITC (HS) code 21069030 covered under respective Bills of Entry Nos.7197611 and 7197624 both dated 22.01.2022 covered under Bills of Lading No.BLPLRGN2102381 dated 04.01.2022 consisting of 3 containers i.e., AMFU8846107, TCNU6471174 and TEMU6606496 and BLPLRGN2102383 dated 04.01.2022 consisting two containers i.e., TCNU6333560, TGHU7872147 respectively within a stipulated time considering the perishable nature of the goods that were detailed/seized by the office of the respondents and direct the respondents to issue a 'Detention Certificate' for waiver of demurrage and container detention charges in terms of Regulations 6(1)(1) of the Handling of Cargo in Customs Areas Regulations, 2009 r/w Regulation 10(1)(1) of the Sea Cargo Manifest Transshipment Regulations, 2018.

For Petitioner : Dr.Krishnakandh

For Respondents : Mr.R.Aravindhan
Senior Standing Counsel

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ORDER

The petitioner has filed this writ petition for a Mandamus to direct the respondents to permit the petitioner to re-export the goods, namely, Unflavored Supari (Betelnut Pro6duct) and to issue a 'Detention Certificate' for waiver of demurrage and container detention charges.

2.The petitioner has imported Betelnuts in 5 different containers covered by two Bill of Entries both dated 22.01.2022 in Bills of Entry Nos.7197611 and 7197624. According to the petitioner, the imported Betelnuts comes under the heading 21069030. However, the imported consignments have neither been assessed nor allowed to be cleared provisionally or allowed to be re-exported.

3.The learned counsel for the petitioner submits that the imported goods are perishable in nature and in case the respondent Department is of the view that the imported Betelnuts, which are the natural products, are be prohibited, the petitioner may be allowed to re-export the goods to cut their losses. The learned counsel for the petitioner has relied on the decision of this Court in W.P.No.24062 of 2021 ***(M/S.Unik Traders Vs. The Additional Commissioner of Customs, Chennai and another)*** dated 29.11.2021.

4.The learned counsel for the petitioner further submits that the said order has not been appealed so far and it appears that the decision taken therein under some what similar circumstances has been accepted by the department. It is submitted that the said decision has also been recently followed by the Principal Bench of this Court in its order made in W.P.Nos.3601 and 3603 of 2022.

5.The learned Senior Standing Counsel for the respondents on the other hand submits that the imported goods are prohibited and therefore, they are liable to be confiscated. It is submitted that the Department is investigating the matter and therefore, the writ petition at this stage is premature and is therefore, liable to be dismissed.

6.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

7.The decision of this Court in the *Unik Traders's case (referred to supra)* has given a guideline as to what has to be followed by the department under similar circumstances. Paragraph No.92 from the aforesaid order reads as under:-

> *"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*

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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."

8.Considering the above, I am inclined to dispose of this writ petition in terms of paragraph No.92 of the aforesaid decision, which has been extracted above. Liberty is also given to the petitioner to participate in the proceedings that may be contemplated by the respondents. The respondents are directed to take action within a period of 30 days from the date of receipt of a copy of this order and come to a decision one way or the other within a period of 15 days thereafter. It is needless to state that before passing such orders, the petitioner shall also be heard.

9.The writ petition stands disposed of, in terms of the above observation. No costs.

Sd/-

Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar(CS)

Mm

TO:

1.Assistant Commissioner of Customs-Imports,
Custom House,
New Harbour Estate, Tuticorin 628 004.

2.The Additional Commissioner of Customs-Imports,
Custom House,
New Harbour Estate, Tuticorin 628 004.

+1 CC to M/s.M. RAMASAMY, Advocate (SR-22154[F] dated 28/04/2022)

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28.04.2022

RD(24.05.2022) 3P 4C

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