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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.02.2022
CORAM:
THE HONOURABLE MR.JUSTICE C.SARAVANAN
W.P.(MD) No.10087 of 2021
and
W.M.P.(MD) No.7805 of 2021

M/S.Deepam International,
represented by its Proprietorix Mrs.Seema Devi Verma,
A2, Plot No.238, Koshay Apartment,
Gajendran Road,
Tiruverkadu Cooperative Nagar,
Tiruvallur 600 077,
Tamil Nadu. ... Petitioner

/vs./

1.The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin 628 004.

2.The Assistant Commissioner of
Customs (Import Assessment),
Group-1,
Custom House, New Harbour Estate,
Tuticorin 628 004.

3.The Assistant/Deputy Commissioner
of Customs (SIIB),
Custom House, New Harbour Estate,
Tuticorin 628 004. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents herein to release the goods viz., 540 Baga viz., 27 MTS of Unflavoured Supari (Cut Betelnut Product) and 540 Bags viz., 27 MTS of Unflavoured Supari (Split Betelnut Product) of Myanmar Origin Unflavoured Supari imported from The Republic of the Union of Myanmar vide Bill of Entry No.3281965, dated 24.03.2021 totally valued at USD 36,450.00 and USD 27000.00.

For Petitioner : Mr.A.K.Jayaraj
For Respondents : Mr.R.Aravindan
Senior Standing Counsel

ORDER

The petitioner has filed this writ petition for a Mandamus to direct the respondents to release the goods viz., 540 Baga viz., 27 MTS of Unflavoured Supari (Cut Betelnut Product) and 540 Bags viz., 27 MTS of Unflavoured Supari (Split Betelnut Product) of Myanmar

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Origin Unflavoured Supari imported from Myanmar, vide Bill of Entry No.3281965, dated 24.03.2021 totally valued at USD 36,450.00 and USD 27000.00.

2.It is the case of the petitioner that they had imported consignments from Myanmar during January, 2021. However, a Bill of Entry was filed by the petitioner only on 24.03.2021 in Bill of Entry No.3281965 due to a commercial dispute between the petitioner and the foreign Exporter, Royal Empire King Corporation Limited, Myanmar.

3.It is their specific case that the imported consignment of the goods, namely, Unflavoured Supari (Split Betalnut Product), was classified as CTH 21069030. However, the consignment has not been allowed to be cleared, even though similar consignments imported by others during the same period from the suppliers from Myanmar were allowed to be cleared, in terms of the Deputy Commissioner, dated 10.05.2021 in File No.CCCO/TECH/REF/63/2020-AEO-O/o CC-CUS-PREV-Zone-TRICHY and the communication of the Additional Commissioner, Trichy dated 19.05.2021.

4.It is further submitted that the respondents, Assessing Officers cannot take a divergent view regarding the classification of same product and there is absolutely no justification in not completing the assessment of the subject Bill of Entry. It is submitted that as per the communication dated 24.05.2021, the 2nd respondent has requested clearance of the pending cargos at the earliest, taking note of the instructions of the Chief Commissioner of Customs, Tiruchirappalli dated 10.05.2021. The learned counsel for the petitioner submits that the petitioner may be allowed to furnish bank guarantee and the assessment may be completed provisionally to clear the imported consignment.

5.Opposing the prayer, the learned Senior Standing Counsel for the respondent submits that the imported consignments of Betel nut have been wrongly classified as RITC 21069030. It is submitted that the imported consignment has to be classified under CTH 0802 80 – Areca nuts and CTH 0802 80 20. It is further submitted that the containers contain cut and split arecanut classifiable under different CTH 08028020 and is prohibited under Notification No.25/2015-20, dated 25.07.2018 issued by the Government of India, Ministry of Commerce and Industry, Department of Commerce, New Delhi. It is submitted that only if the CIF value is Rs.251/- or more per kilogram, import is freely permissible.

6.The learned Standing Counsel for the respondents further submits that the imported goods have been seized under mahazar dated 12.04.2021 and the samples were drawn under test memo No.14/13.04.2021-A2 and 15/13.04.2021-A2 dated 13.04.2021 for the

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declared cargo Unflavored Supari (cut betel nut product) and Unflavored Supari (split betel nut) respectively to ascertain:-

a) Verify the description.

b) Nature of the cargo and composition of the sample.

c) Specify whether the cargo is processed or of raw form.

7.It is further submitted that the imported consignment was tested at the Custom House Laboratory, Custom House, Tuticorin and the Custom House has confirmed that the imported consignment was in pale brown color cut pieces of nuts and has the characteristics of Betel nut (Unboiled) and it is other then processed.

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

9.The import was made as early as in the month of January, 2021. The Bill of Entry for clearance was filed belatedly on 24.03.2021. Though almost a year has lapsed, till date no decision has been taken as to whether the imported goods have to be classified under CTH 21069030 or under CTH 0802 80 20. The goods are natural products and are prone to natural decay due to efflux of time.

10.Considering the above, I direct the respondents to pass appropriate orders assessing and classifying the goods, based on the report of the Custom House Laboratory, Custom House, Tuticorin, within a period of 10 days from the date of receipt of a copy of this order. In case, the imports made by the petitioner and the imports referred to in the communication of the Chief Commissioner of Customs, Tiruchirappalli, dated 10.05.2021 as communicated by the 3rd respondent are the same, the respondents shall consider the same and pass appropriate orders and ensure that there is no discrimination between the two classes of imports and maintain the uniformity. It is open for the respondents to accept such securities as may be required to secure the interest of the revenue, in case the goods are allowed to be cleared after provisional assessment. The respondents may take appropriate decision. In case the goods are found to be prohibited, in terms of the discussion of the order dated 29.11.2021 in W.P.No.24062 of 2021, where an elaborate discussion has been made in the said writ petition. The petitioner may be allowed to be reexport the goods back to the foreign Exporter in accordance with law.

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11.The writ petition is disposed of in terms of the above observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

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TO

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+1 CC to M/s.A.K.JAYARAJ, Advocate (SR-5140[F] dated 09/02/2022)

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