



W.P.(MD)No.15412 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 15.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.(MD)No.15412 of 2022

and

W.M.P.(MD).Nos.11055 and 11058 of 2022

M/s.Mahadev Enterprises
Represented by its Proprietor,
Shri Sohil Suchak

.. Petitioner

Vs

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

.. Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, forbearing the respondent from adjudicating the show cause notice No.57/2022 in F.No.DRI/CZU/TTN/VIII/48/05/INT-01/2022 dated 01.07.2022., issued under Section 111(d), 111(m), 111, 112, and 114AA of the Customs Act, 1962, as per the order of the High Court, Karnataka, in W.P.(C).No.2898 of 2022 (GM-RES) dated 10.02.2022.

For Petitioner : Mr.Dr.S.Krishnanandh
For M/s.B.Satish Sundar

For Respondent : Mr.B.Vijayakarthiskeyan
Standing Counsel



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ORDER

This Writ Petition has been filed seeking for issuance of writ of mandamus, forbearing the respondent from adjudicating the show cause notice No.57/2022 in F.No.DRI/CZU/TTN/VIII/48/05/INT-01/2022 dated 01.07.2022., issued under Section 111(d), 111(m), 111, 112, and 114AA of the Customs Act, 1962, as per the order of the High Court, Karnataka, in W.P.(C).No.2898 of 2022 (GM-RES) dated 10.02.2022 and further to direct the respondent to release the goods for Re-Export on execution of Bond for the full value of the goods in terms of W.P. (MD).No.8916 of 2022 and W.A.(MD).No.556 of 2022 and C.M.P. (MD).No.4839 of 2022.

2.Mr.B.Vijayakarhikeyan, learned Standing Counsel takes notice for the respondent. By consent, this writ petition is taken up for final disposal at the admission stage itself.

3.The learned counsel appearing for the petitioner submitted that the petitioner is running the business of import and export of various



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commodities including Areca Nuts/Betelnuts with registered IEC No.BWXPS5138M issued by the office of the DGFT and also registered under GST. The petitioner imported Betelnut products commonly known as 'Supari' to an extent of 1356000 kgs (Approx.) vide 2 Bills of lading. The said goods fall under chapter heading 21069030 and they classified the said goods accordingly. Thereafter, the petitioner had preferred a Writ Petition before this Court in W.P.(MD).No.8916 of 2022 to permit the petitioners to re-export the goods namely 'unflavoured Supari' (Betelnut Product) classifiable under ITC (HS) code 21069030 covered under respective Bills of Entry Nos.7197611 and 7197624, both dated 22.01.2022 covered under the Bills of Lading No.BLPLRGN2102381, dated 04.01.2022 consisting of three containers and two containers respectively within a stipulated time considering that the goods are perishable in nature. This Court, by order, dated 28.04.2022, directed the respondent to take action within a period of 30 days from the date of receipt of a copy of that order and further to take a decision one way or the other within a period of 15 days thereafter. Since no action taken, the petitioner filed a contempt petition in Cont.P. (MD).No.768 of 2022 before this Court, which came up for hearing on



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20.06.2022, at that time, it was informed by the counsel for the department, writ appeal and in W.A.(MD).No.556 of 2022 and C.M.P. (MD).No.4839 of 2022 filed. During the hearing of Writ Appeal, the petitioner filed typed set of papers, wherein, the petitioner had produced the order, which was passed by the High Court of Karnataka in W.P.No. 2898 of 2022, dated 10.02.2022, wherein, Notification No.20/2015-2020, dated 25.07.2018 stayed. He further submitted that the Principal Bench of this Court in W.P.Nos.3601 and 3603 of 2022, dated 04.04.2022, which followed the earlier order passed in W.P.No.24062 of 2021, dated 12.11.2021, permitted, provisional clearance pending classification, an exclusion of bond to clear Betelnuts.

4.The respondent challenging the Single Judge order of this Court in W.P.(MD).No.8916 of 2022, dated 28.04.2022, filed writ appeal in W.A.No.556 of 2022 and the same was dismissed with an observation that the respondent to exercise their option as per the orders of the learned Single Judge upon the respondent executing a bond to the full value of the goods that is sought to be re-exported and this order or direction is issued without prejudice to the rights or authority of the



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appellants to proceed further with the investigation and to impose or collect whatever charges that may be permissible under law. While being so, though the show cause notice dated 01.07.2022 issued and the same was forwarded to the petitioner through email only on 08.07.2022, the show cause notice primarily proceeds based on the Notification No. 20/2015-2020, dated 25.07.2018. Further, the issue, primarily a classification issue, wherein, whether the 'unflavoured Supari' (Betelnut Product) to be classified under CTH and whether it is under Chapter 8 or Chapter 21. In both classification, the goods is free for import and free for export, it falls under 2106 as classified by the petitioner. The only difference would at what rate of duty and nothing more. He further submitted that in the show cause notice, para 61 it states that if no cause is shown, action proposed to be taken within 30 days from the date of receipt of that notice, it would be construed that there is no objection and the show cause notice would be decided ex-parte based on the evidence on record. Further, relied upon documents not enclosed in soft form in a CD. The petitioner had received the show cause notice only through online and not physically. Further, no CD has been served. Thereafter, the petitioner sent interim reply on 09.07.2022 stating that it is only an



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interim reply after receiving the documents from the authority, thereafter, complete reply can be given later, an attachment was forwarded to the petitioner, but the same could not be opened, since it came under Google Drive, wherein, password is required to open the attachment, hence, the petitioner was denied the access to the attachment. In the meanwhile, the petitioner received personal hearing notice, dated 11.07.2022 directing the petitioner to appear on 12.07.2022 and thereafter, followed by second personal hearing on 12.07.2022, directing the petitioner to appear on 13.07.2022 and third personal hearing, dated 13.07.2022, directing the petitioner to appear on 15.07.2022 and notices have been addressed to the petitioner's address of M/s.Mahadev Enterprises, No.31A, W.No.39, Maskasath Itwari, Nagpur, Maharashtra, and all the notices sent through email without any link details to attend personal hearing through the video conferencing. Further in case of physical hearing, it was impossible to travel from Nagpur to Tuticorin, in such a short notice.

5.In view of the above, it clearly shows that the petitioner wantonly denied proper opportunity and personal hearing was only a formalities, thereby petitioner was denied opportunity and violation of



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the principals of natural justice. The petitioner having no other option and he had approached this Court by way of writ petition. Further, the petitioner now sought for a limited prayer that he wants goods to be re-exported, he undertakes execute necessary bond and participate in the personal hearing.

6.The learned standing counsel appearing for the respondent submitted that the petitioner earlier filed W.P.No.8916 of 2022 and this Court by order, dated 28.04.2022 following the Unik Traders case, this Court disposed the same giving liberty to the petitioner to participate in the proceedings that may be contemplated by the respondents. Further, the respondents were directed to take action within a period 30 days from the date of receipt of a copy of that order and come to a decision one way or other within a period of 15 days. The petitioner not responded to the notice of communication sent to respondent to participate in any of the proceedings. On the contrary, the petitioner had filed a contempt petition in Cont.P.(MD).No.768 of 2022. Thereafter, the respondent filed writ appeal in W.A.No.556 of 2022 to set aside the order, dated 28.04.2022 confirming the order of the Single Judge. The respondent undertaking is



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that, after the order of single Judge, it was left with period of only 45 days ie., within 30 days to issue show cause notice and complete enquiry and thereafter within 15 days to pass appropriate orders. In total, they were left with only 45 days. In the mean while, the respondent filed a writ appeal, which consumed some time. The petitioner running against time to complete the adjudication process, as per direction of this Court, took immediate steps sent notice to the petitioner. The show cause notice was received by the petitioner through online, followed by a hard copy along with CD sent through speed post, which was despatched on 12.07.2022 along with CD. In the meanwhile, without delay, personal hearing was given, since the petitioner failed to respond to appear for the personal hearing. Thereafter, totally three personal hearing notices issued, but the petitioner failed to respond. The respondent who rushes to this Court with alarcity, failed to responded for show cause notices, on 19.04.2022, he had asked for hard copies of the relied upon documents. The petitioner called to appear for personal hearing make his objection, through video conferencing or personally. The only apprehension of the respondent is that the entire process ought to have been completed within 45 days, otherwise they would be hauld for contempt.



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7.Considering the submission and perused the materials available on records, it is seen that the department following the procedure, issued show cause notice, which was received by the petitioner through email. Initially, appending documents not sent, after receipt of reply dated 19.07.2022 documents were appended to the email, which was followed by a hard copy, sent through speed post. The petitioner filed a contempt petition against the officials. In the meanwhile, the officials challenged the order of the Single Judge order in W.A.(MD).No.556 of 2022, which got dismissed. Hence, he has issued show cause notice and given option for personal hearing constrained to conclude the same, in view of the order passed in W.P.,No.8916 of 2022 dated 28.04.2022. It is only a classification issue which is primarily proceeds based on the notification No.20/2015 dated 25.07.2018. Now, this notification stayed by the High Court of Karnataka in W.P.No.2898 of 2022 by order, dated 10.02.2022. Be that as it may, now the department has no objection to re-export the import consignment of the petitioner, the only requirement for the department is that the petitioner to execute a bond and to participate in the proceedings, for the show cause notice and enquiry. The issue can be



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decided on its own merits. The petitioner to participate in all these proceedings without being a reason for delay.

8. Recording the same, this Court directs the respondent to release the goods for Re-Export and the petitioner is directed to execute a bond for the full value of the goods, within a period of one week from 18.07.2022. The re-export order to be passed without delay, preferably within one week, ofcourse, after complying the procedures of the Customs.

9. With the above directions, this Writ Petition is disposed of. No costs.

15.07.2022

Index: Yes/No
Internet : Yes/No
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Note: Issue Order Copy on 18.07.2022.



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To:

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The Additional/Joint Commissioner of Customs,
Custom House, New Harbour Estate,
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M.NIRMAL KUMAR, J.

vsg

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