BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.17157 of 2022
and
W.M.P.(MD)No.12519 of 2022

M/s.K.K.International
Rep. by its Proprietor Mr.Surendra Singh,
Shop No.09, Ravi Avenue,
Shakthi Nagar, Mundra,
Kachchh,
Gujarat – 370 421. ... Petitioner

versus

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

2. The Joint/Additional Commissioner
   of Customs (Imports),
   Custom House,
   New Harbour Estate,
   Tuticorin – 628 004.

3. The Deputy Director,
   Directorate of Revenue Intelligence,
   No.22/14, Celin Garden, Roche Colony,
   South Beach Road,
   Tuticorin – 628 001. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Mandamus, to direct the respondents herein to release the goods viz., 386 bags viz. 27.02 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.7636317, dated 24.02.2022, classifiable under CTH 21069030 and which was also assessed and totally valued at USD 40530/- (CNF) for 27.02 MTs., and further direct the respondents to issue Waiver Certificate for Detention and Demurrage Charges under Regulation of Handling of Cargo in Customs Area Regulations, 2009.

For Petitioner	:	Mr.A.K.Jayaraj
For R1 and R2	:	Mr.R.Aravindan Standing Counsel
For R3	:	Mr.K.Prabhu Junior Standing Counsel for Customs

ORDER

This writ petition is filed for a mandamus, directing the respondents herein to release the goods, viz. 27.02 MTs., of Betel Nut product known as Supari (unflavoured Supari) imported from the Republic of the Union of Myanmar vide Bill of Entry No.7636317, dated 24.02.2022 and further, direct the respondents to issue Waiver Certificate for Detention and Demurrage Charges under Regulation of Handling of Cargo in Customs Area Regulations, 2009.

2. The learned counsel appearing for the petitioner submits that the petitioner was registered in the trade of import of Betel Nuts and they have been allotted with Import-Export Code issued by the office of JDGFT. The petitioner has also registered under GST and also assessed to Income Tax. The petitioner has also registered with Food Safety & Standards Authority of India.

3. The learned counsel appearing for the petitioner further submits that they have imported 27.02 MTs., 386 bags of Betel Nut product known as Supari (Unflavoured Supari) from Myanmar vide Invoice No.RT/013/2022, dated 28.01.2022 from M/s.Royal Tharcho International Co. Ltd., Myanmar. The petitioner had declared the value of the above goods at USD 1,500.00 per MT and totally USD 40530/- (CNF) for 27.02 MTs. The petitioner had also filed Bill of Entry No. 7636317, dated 24.02.2022 for clearance of the above goods through Tuticorin Port. They had declared that the above goods are classifiable under 2106 9030. The goods are from Myanmar Origin.

4. The learned counsel for the petitioner further submits that they had submitted all reliable and necessary documents, such as Commercial Invoice, Packing List, Bill of Lading, Certificate of Origin, Combined Declaration and Certificate issued in Myanmar under Duty Free Tariff Preference Scheme by India for Least Developed Countries, Fumigation Certificate and Phytosanitary

Certificate issued by the Republic of the Union of Myanmar, Department of Agriculture to the Customs.

5. The learned counsel for the petitioner further submits that they had filed Bill of Entry for Home Consumption and sought for clearance of the goods. They also claim the release of goods under CTH 2106 9030 at NIL Rate of Duty and on payment of IGST at 18% . They had also enclosed the Insurance Certificate and also Certificate of Origin issued by the Republic of the Union of Myanmar, Federation of Chambers of Commerce and Industry (UMFCCI), confirming that the goods are of Myanmar Origin and also Least Developed Countries Certificate and also enclosed Phytosanitary Certificate issued by Ministry of Agriculture and Irrigation, Government of the Republic of the Union of Myanmar. Thereafter, the petitioner requested the respondents herein to pass orders for clearance of the imported goods and the respondents failed to do so and withheld the goods without there being any basis.

6. The learned counsel appearing for the petitioner further submits that after filing Bill of Entry, assessment was done on 26.02.2022 and goods were examined on 02.03.2022. Thereafter, the samples were taken from the containers and sent to FSSAI for giving report. The FSSAI report confirmed that the goods imported were fit for human consumption and issued No Objection for release of the goods. The samples were also sent for testing to the Customs House Laboratory.

7. The learned counsel for the petitioner further submits that the goods were examined thoroughly by SIIB on 25.05.2022, however, the goods were detained under Section 110 of the Customs Act. According to the learned counsel for the petitioner, the FSSAI report confirmed that the goods imported are fit for human consumption and even thereafter, the further detention of the goods is improper.

8. The learned counsel for the petitioner submits that the Betel Nut would fall under Customs Tariff Heading 2106 and Sub-Heading 21069030. He further submits that in identical situations, the goods have been released in all other major ports and ICDs, namely, Bangalore, Mundra, Nhavaseva and other places. However, the petitioner's goods alone were not released from 24.02.2022, which had caused great loss not only to the petitioner to pay demurrage charge but also to other sources from whom he had received money for trade and the interest rate is also mounting.

9. The learned counsel appearing for the petitioner further submits that if the Customs Authority felt that the goods have to be detained under Section 110-A of the Customs Act, it could have been given to the petitioner allowing them to clear the goods on payment of such security. In a similar case also, this Court in W.P.(MD)No.13644 of 2022 on 07.07.2022 has also passed an order directing the Commissioner of Customs (Imports) to release the cargo provisionally

subject to furnishing of PD bond for full value of the goods and furnishing of bank guarantee at 50% of the differential duty considering Duty Free Tariff Preference Scheme for Least Developed Countries (LDC) benefit. He also requests this Court to dispose of this writ petition on the above terms.

10. Mr.K.Prabhu, learned Junior Standing Counsel for the respondents filed a counter affidavit and also agreed for the same.

11. In a similar case, this Court, in W.P.(MD)No.13644 of 2022, on 07.07.2022, has passed the following order:

> "18. Thus, on considering the submissions made by the learned counsels and on perusing all the materials, following plethora judgments referred, it is the consistent view of this Court that in case of provisional assessment, provisional release is permissible, in fine the direction given in the aforesaid batch of Writ Petitions is extended to the present matter as well. Hence, this Court permits the petitioner to make an application for provisional

release under Section 110-A, on such application, when received, shall be disposed of by the Adjudicating Authority, after hearing the petitioner and simultaneous with a prima facie determination of the classification of the commodity, within a period of two (2) weeks from the date of receipt of the application. The Commissioner of Customs (Imports) is hereby directed to release the cargo covered under Bill of Entry No.7102157, dated 17.01.2022, provisionally subject to furnishing of PD bond for full value of the goods and furnishing of bank guarantee at 50% of the differential duty considering, Duty Free Tariff Preference Scheme for Least Developed Countries (LDC) benefit. The petitioner shall furnish the Least Developed Countries Certificate at the time of assessment and the same shall be considered by the Assessing Officer at the time of assessment. The Department shall continue their adjudication process and conclude the same without delay. The entire exercise shall be completed within a period of three (3) weeks from the date of receipt of a copy of this order."

12. Following the above order, the Writ Petition is disposed of permitting the petitioner to make an application for provisional release under Section 110-A of Customs Act and on filing such application, the same shall be disposed of by the Adjudicating Authority, after hearing the petitioner and simultaneous with a prima facie determination of the classification of the commodity, within a period of two (2) weeks from the date of receipt of the application. The Commissioner of Customs (Imports) is hereby directed to release the cargo covered under Bill of Entry No.7636317, dated 24.02.2022, provisionally subject to furnishing of PD bond for full value of the goods and furnishing of bank guarantee at 50% of the differential duty considering, Duty Free Tariff Preference Scheme for Least Developed Countries (LDC) benefit. The petitioner shall furnish the Least Developed Countries Certificate at the time of assessment and the same shall be considered by the Assessing Officer at the time of assessment. The Department shall continue their adjudication process and conclude the same without delay. The entire exercise shall be completed within a period of three

(3) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet: Yes / No.

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B.PUGALENDHI, J.

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