



W.A(MD) Nos.935 to 941 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2022

CORAM:

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD**

**W.A(MD) Nos.935 to 941 of 2022
and
C.M.P(MD) Nos.7747, 7749 to 7756, 8835 to 8837, 8939,
8943 to 8946 of 2022**

1. The Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin – 628 004. ... Appellant-1/Respondent-1
 2. The Joint / Additional Commissioner
of Customs (Imports),
Custom House,
New Harbour Estate,
Tuticorin – 628 004. ... Appellant-2/Respondent-2
- VS-
1. M/s. Sri Shunmuga Traders,,
Represented by its Partner T. Manoharan,
2G/385, Backialakshmi Nagar,
Tuticorin - 628 008. ... Respondent-1/Petitioner



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2. The Deputy Director,
Directorate of Revenue Intelligence,
22/14, Celin Garden, Roche Colony,
South Beach Road,
Tuticorin - 628 001.

... Respondent-2/Respondent-3

Prayer: Writ Appeals filed under Clause 15 of Letters Patent, against the order dated 07.07.2022 made in W.P(MD) Nos.12887, 13643, 12888, 12887 and 13644 of 2022.

For Petitioner : Mrs.R.Hemalatha
Senior Standing Counsel
assisted by Mrs.S.Ragaventhre,
(in all Writ Appeals)

For Respondents : Mr.A.K.Jayaraj for R1
(in all Writ Appeals)

COMMON JUDGMENT

(Judgment of the Court was made by R.MAHADEVAN, J.)

Aggrieved over the order dated 07.07.2022 passed by the Writ Court in W.P(MD) Nos.12887, 13643, 12888, 12887 and 13644 of 2022. the official respondents in the said writ petitions, have come up with these writ appeals.

2. The aforesaid writ petitions were filed by the first respondent / writ petitioner for issuance of a Writ of Mandamus, directing the appellants herein to release the 338 bags (27.04 MTs) of Betel Nut



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product known as Supari (unflavoured supari) of Myanmar Origin imported vide Bill of Entry No.7556557 dated 18.02.2022, classifiable under CTH 21069030 which was assessed and totally valued at USD 40560/- (CNF) for 27.04 MTs and further to direct the appellants herein to issue Waiver Certificate for Detention and Demurrage charges under Regulation of Handling of Cargo in Customs Area Regulations, 2009. The Writ Court after hearing both sides allowed the writ petitions by separate order dated 07.07.2022.

3. The learned Senior Standing Counsel appearing for the appellants submitted that the first respondent / petitioner in all the cases had filed their respective Bills of Entries for import of Betel nut product known as 'Supari (unflavoured supari)' classified under Customs Tariff heading (CTH) 21069030 and country of origin declared as 'Myanmar' with a CIF value of Rs.114/Kg (approximate). However, the intelligence gathered by the Directorate of Revenue Intelligence (DRI) indicated that the importers had misdeclared the description of the imported goods and misclassified the same in the import documents under CTH 21069030, when the actual imported goods were whole/split Areca nuts, classifiable under CTH 080280, which is a prohibited item for import under DGFT



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Notification No.20/2015-2020 dated 25.07.2018, if CIF value is below Rs.251/- per Kg. Therefore, the petitioners' consignments had been de-stuffed from the containers and moved to Public Bonded Warehouses by the petitioners under Section 49 of the Customs Act, 1962, for safe storage and to avoid container detention charges. She further submitted that during the preliminary examination of the above said consignments, representative samples were drawn by the shed officers of customs and forwarded to Custom House Laboratory, Chennai, for testing through DRI. During examination of the said goods, by the officers of SIIB, Custom House, Tuticorin, in the presence of officers of DRI, Tuticorin, it was found that in the place of the declared goods Betel nut product known Supari (unflavouredsupari), falling under CTH 21069030, the bags contained areca nut in whole/split form', classifiable under CTH 080280, stuffed in gunny bags. The officers further found that the value declared for the imported goods in the respective Bills of Entry were less than the value of Rs. 251/kg fixed by DGFT, thus prohibited for import. Accordingly, the above mentioned import consignments of Areca nuts were seized under Section 110 of the Customs Act, 1962, *vide* Mahazar Proceedings dated 26.05.2022, but without considering the same, the Writ Court has erroneously allowed the writ petitions. Thus, she would



pray for allowing these appeals.

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4. Learned counsel for the first respondent / writ petitioner in all the cases submitted that series of orders have been made by this Hon'ble Court, directing the authorities to release the seized goods pending adjudication and in support of his submissions, he has placed reliance on the decision of a Division Bench of this Court in ***W.A(MD) Nos.863 of 2020 and batch cases, [Union of India v. M/s.Black Gold Technologies]***, wherein, this Court after taking into consideration the judgment of the Hon'ble Supreme Court reported in ***2019 (365) E.L.T. 465 (S.C.) [Commissioner of Customs v. Atul Automations Pvt. Ltd.]*** has held as follows:-

“25.The learned counsel for the appellant/revenue has drawn the attention of this Court to pages 19 to 21 of the typed set of documents, which contain the de-stuffed items of the imported goods and made an attempt to point out that those imported items are without cut either on the bead wire or no two cuts are available. However, this Court is not inclined to go into the said aspect for the reason that it involves factual adjudication and any finding rendered in this regard may affect the Revenue or the respondent/importer.

26.The Hon'ble Apex Court in ***Atul Automations Pvt. Ltd. case*** (supra) had dealt with the aspect relating to



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prohibition/restriction of goods and in paragraph No.9 observed as follows:

"9.Unfortunately, both the Commissioner and the Tribunal did not advert to the provisions of the Foreign Trade Act. The High Court dealing with the same has aptly noticed that Section 11(8) and (9) read with Rule 17(2) of the Foreign Trade (Regulation) Rules, 1993 provides for confiscation of goods in the event of contravention of the Act, Rules or Orders but which may be released on payment of redemption charges equivalent to the market value of the goods. Section 3(3) of the Foreign Trade Act provides that any order of prohibition made under the Act shall apply mutatis mutandis as deemed to have been made Under Section 11 of the Customs Act also. Section 18A of the Foreign Trade Act reads that it is in addition to and not in derogation of other laws. Section 125 of the Customs Act vests discretion in the authority to levy fine in lieu of confiscation. The MFDs were not prohibited but restricted items for import. A harmonious reading of the statutory provisions of the Foreign Trade Act and Section 125 of the Customs Act will therefore not detract from the redemption of such restricted goods imported without authorisation upon payment of the market value. There will exist a fundamental distinction between what is prohibited and what is restricted. We therefore find no error with the conclusion of the Tribunal affirmed by the High Court that the Respondent was entitled to redemption of the consignment on payment of the market price at the



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reassessed value by the customs authorities with fine
Under Section 112(a) of the Customs Act, 1962."

5. Referring to the Notification No.20/2015-2020, dated 25.07.2018, at page 35 of the typed set of papers (Vol – 1) filed by the first respondent/writ petitioner, the learned counsel for the first respondent / writ petitioner in all the cases further submitted that since the aforesaid notification states that the import of arecanut over and above CIF Rs.251/- per kilogram is free and import below CIF Rs.251/- is prohibited, this Court, after taking note of the aforesaid notification, directed the adjudicating authority to dispose of the applications of the petitioners for provisional release of commodities under Section 110A of the Customs Act. In support of his submission, the learned counsel for the first respondent / writ petitioner placed reliance on a decision of the Division Bench of this Court in ***W.P(MD) Nos.11942 of 2022 and batch cases, [M/s.Blue Vista International Ltd., v. The Commissioner of Customs]***, wherein, this Court held as under:-

“8. In terms of Notification No.20/2015-2020 dated 25.07.2018, the Director General of Foreign Trade has held that all products falling under Chapter-8 are freely importable subject to the condition that the import value is Rs.251/- and above per kilogram CIF. Admittedly, the



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commodities in all consignments in the present cases, are valued at less than Rs.251/- per kg. Thus, and assuming that the commodities in question were held to fall under the sweep of Chapter 8, they would be categorised as ‘prohibited goods’ as per Notification No.20/2015-2020.

...

20. 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.”

Hence, the learned counsel for the first respondent / writ petitioner submitted that the Writ Court has rightly allowed the writ petitions and directed for release of the goods following the plethora of judgments in this regard.

6. We have heard the submissions made by the learned counsel for the appellants / respondents 1 and 2 and the learned counsel for the first



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respondent / writ petitioner and perused the materials available on record.

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7. On a perusal of the Notification No.20/2015-2020, dated 25.07.2018, it appears that if the declared import value is less than Rs. 251/- per kilogram, the import of Arecanut is prohibited and thus, the Adjudicating Authority after taking note of the aforesaid notification comprehensively, has issued a show cause notice No.88/2022, dated 05.08.2022 to the appellants / respondents 1 and 2.

8. However, considering the submissions of the learned counsel on either sides and also taking into consideration the judgments of the Apex Court as well as the earlier judgments of this Court, the appellants/ respondents 1 and 2 are directed to consider the applications of the first respondent / writ petitioner in all these cases for provisional release under Section 110-A of the Customs Act and the same shall be disposed of by the Adjudicating Authority on merits and in accordance with law, within a period of one (1) week from the date of receipt of a copy of this judgment.



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9. With the above directions, these writ appeals stands disposed of.

No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D., J.] [J.S.N.P., J.]
07.11.2022

Index : Yes / No
Internet : Yes / No
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To

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.



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R.MAHADEVAN, J.
and
J.SATHYA NARAYANA PRASAD, J.

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