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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.22341 of 2022

M/s.Shimla Fruit Agency,
Old.No.51, New No.67,
Rajaji Road, Ram Nager,
Coimbatore – 641 009.
Represented by its Managing Partner and
Authorised Signatory,
Shri S.K.Mohammed Saffiullah.

... Petitioner

Vs.

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



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the office of the 1st Respondent to act on the Petitioner's application dated 22.06.2022 and cause provisional release of imported cargo of betel nut product vide Bill of Entry No.7985049 dated 23.03.2022 weighing 81 Mts and also issue suitable detention-cum-demurrage waiver certificate in terms of the Handling of Cargo in Customs Area Regulation, 2009 and Sea Cargo Manifest and Transhipment Regulations, 2018.

For Petitioner : Mr.B.Sathish Sundar

For Respondents : Mr.N.Dilip Kumar
Senior Standing Counsel
Assisted by Mr.K.Prabhu,
Junior Standing Counsel

ORDER

This Writ Petition has been filed to direct the 1st Respondent to act on the Petitioner's application dated 22.06.2022 and cause provisional release of imported cargo of betel nut product vide Bill of Entry No. 7985049 dated 23.03.2022 weighing 81 Mts and also issue suitable detention-cum-demurrage waiver certificate in terms of Handling of Cargo in Customs Area Regulation, 2009 and Sea Cargo Manifest and Transhipment Regulations, 2018.



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2. It is submitted by the learned counsel for the Petitioner that the Petitioner Firm is engaged in the business of import and local sale of food products, fruits, condiments, spices etc. The Petitioner Firm entered into a contract with one M/s.PT.V.J and J internasional Kota Medan, Indonesia for supply of betel nut product popularly known as “supari unflavoured”. Pursuant to such contract, the Petitioner made payments to the said supplier. The supplier raised an invoice dated 18.02.2022 for supply of goods. After procurement, the goods were packed and were shipped from Belawan Port, Indonesia to Tuticorin Seaport in three containers. The import was covered by the following documents viz., packing list, certificate of origin, certificate of fumigation, insurance policy etc. The Petitioner Firm filed Bill of Entry dated 23.03.2022 for clearance of the said goods. However, the goods were not cleared on the ground of certain inquiries / investigation being undertaken by the 3rd Respondent but detained and not allowed for assessment/clearance. The 3rd Respondent directed the 1st and 2nd Respondents not to permit clearance, pending drawal of samples from the consignment to ascertain the nature of the goods.



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3. It is further submitted that the officers attached to the 3rd Respondent had drawn samples pursuant to the said direction and the same was forwarded to the Customs Laboratory, Chennai. In view of the enquiry by the 3rd Respondent, the Petitioner sought for provisional release of the subject goods vide communication, dated 22.06.2022. It is submitted that the declaration adopted by the Petitioner with respect to the subject goods were on the basis of the import documents of the Government Authorities of Indonesia.

4. He further drew the attention of the 1st Respondent to a ruling of the Advance Ruling Authority, New Delhi in the case of ***Isha Exim and M/s.Excellent Betel Nut Products*** with respect to similar products. Further, reliance was placed on the judgment of this Court in the case of ***Isha Exim vs. A.D.G., Directorate of Revenue Intelligence, Chennai*** reported in **2018 (13) GSTL 273 (Mad.)**, wherein, it has held that the seizure of the imported products namely unprocessed betel nuts at the instance of the investigation is not justified having regard to the Advance Ruling obtained by the said assessee. Further, reliance was placed on the judgment of this Court in the



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case of *M/s.Unik Traders*, which had been accepted by the Customs Authorities at Chennai Seaport and provisional release granted qua the goods imported in that case which is similar to the present imports were made. It was further submitted that the practice of Major Customs House with respect to the importation would have to be followed in a Minor Customs House like the 1st Respondent. On the basis of the aforesaid representation, the Petitioner made a submission that the goods in question should be provisionally released pending any proceedings which may be initiated at the instance of the 3rd Respondent.

5. Pursuant to the representation, the office of the 3rd Respondent has summoned the Petitioner for conducting enquiry. However, the Petitioner sought adjournment in view of his continued appearance before the Office of the Directorate of Revenue Intelligence, Chennai Zonal Unit pursuant to directions of this Court in CrI.O.P.No.16291 of 2022. The Petitioner is in the process of joining the investigation / inquiry being conducted by the 3rd Respondent. The Petitioner would submit that he would co-operate with the investigation / enquiry being conducted by the 3rd



Respondent. While so, the Customs Authorities at Tuticorin have made formal seizure of the goods under Seizure Memorandum dated 04.08.2022.

6. The learned counsel for the Petitioner would submit that a series of orders of this Court have been made including Hon'ble 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 Authomations 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



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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 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



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

7. Heard the learned counsel for the parties and perused the materials placed before this Court.

8. In the light of consistent view taken by this Court and 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 Respondents are directed to consider the application of the Petitioner for provisional release under Section 110-A of



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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 order.

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

18.11.2022

Index : Yes / No

Speaking Order : Yes / No

vji

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MOHAMMED SHAFFIQ, J.

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