



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :22.04.2022

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD).Nos.10086 of 2017, 21744 of 2018, 9813, 10440,
13412, 17467, 21170 and 21176 of 2019, 18780 of 2020,
4509, 6015, 6958, 10126, 10708, and 20041 of 2021

and

W.M.P.(MD).Nos.7735 of 2017, 19663 and 19664 of 2018,
7712, 7713, 8024, 8025, 9994, 13951, 13952, 17806, 17807,
17814 and 17815 of 2019, 15714 of 2020, 3617, 3618, 4704,
4707, 1355, 5350, 11584, 7849, 7851, 8335,
8336, 16742 and 16743 of 2021

G.Nagarajan,
Partner,
M/s.Golden Match Company,
2161, Theivanai Nagar,
Viswanatham Road,
Virudhunagar District.

...Petitioner in W.P(MD).10086 of 2017

G.Saravanan,
Proprietor of Sri Srinivasa Wood Industries,
No.1/246,Tenkasi Road,
Piranoor Border,
Shencotah-627 809,Tenkasi Tk,
Tirunelveli District.

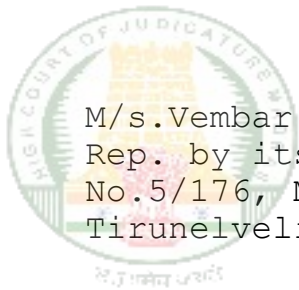
... Petitioner in WP(MD). 21744 of 2018

M/s.Ashapura Enterprises
Rep. by its Partner, Mr.G.Narendrakumar,
5/15a Madurai Bye Pass Road,
Manikandam, Trichy-12

... Petitioner in WP(MD). 9813 of 2019

M/s.Shivam Wood Works
Rep. by its Partner Mr. Ramesh N Patel,
3/132, Tanjore Road, Kattur,
Trichy-620019

... Petitioner in WP(MD). 10440 of 2019



M/s.Vembar Timbers & Agencies
Rep. by its Partner Prabhakaran,
No.5/176, Madurai Road, Tenkasi - 627 803,
Tirunelveli District

... Petitioner in WP(MD). 13412 of 2019

M/s. Mahavir Wood Industries
Rep. By its Managing Partner,
Mr. Jayanthilal ,
S/o. Premjibhai Patel,
No.2/30d, Harbour Bye Pass Road
Survey No.1138 and 1140 ,
Korampallam, Tuticori

... Petitioner in WP(MD). 17467 of 2019

M/s. Maruthi Impex
Rep. by its Partner, B. Dinesh Patel,
S/o. Late. Babulal L. Patel, 1/821,
Courtallam Road, Piranoor Border,
Senkottah-627809, Tirunelveli District

... Petitioner in WP(MD). 21170 of 2019

M/s. Maruthi Enterprises
Rep. by its Proprietor,
B. Dinesh Patel, S/o. Late. Babulal L. Patel,
1/822, Courtallam Road,
Piranoor Border, Senkottah,
Tirunelveli District

... Petitioner in WP(MD). 21176 Of 2019

M/s. New Ambika Timbers
Rep. by its Partner G. Ashok Patel,
No.2/30d, Harbour Bye Pass Road,
Korampallam, Tuticorin -628 005.

... Petitioner in WP(MD). 18780 of 2020

Premier Timbers
Rep by its Partner Me. E. R. Paulson,
S/o. Etturuthi Raphael, A. G. Rapheal, Etturthil House,
Pullepady Road, Kochi Dist-682018,
Kerala State

... Petitioner in WP(MD). 4509 of 2021

Fazil Timbers
Rep. by its Partner Mr. S. Mohamed Umare Farook,
No.140/1b, Shengottah Road,
Tenkasi 627 811

... Petitioner in WP(MD). 6015 of 2021

M/s. Shivam Timber Industries
Rep by Partner ,
Hardik B. Patel , S/o. Sri Bhavan R. Patel ,
No.15, 4th Street , Secretariat Colony ,
Lakshmipuram, Kolathur , Chennai - 600009. Tami

... Petitioner in WP(MD). 6958 of 2021



M/s. Era Timbers
Rep. by its Proprietor Mr. A.Mohamed Fazil,
No.2-30d, Harbour Bye-Pass Road,
Korampallam, Tuticorin 628 005.

... Petitioner in WP(MD). 10126 of 2021

M/s.Bangalore Timber Corpora Tion,
Rep. by Partner, Jawaharlal Babulal Kothari,
S/o.Babulal Chandulal Kothari, No.34,
New Timber Yard Layout, Mysore Rd,
Behind Sattelite Bus Sta

... Petitioner in WP(MD). 10708 of 2021

M/s.RCC and Co
Rep by Proprietor,
K.Williams, S/o.Kanagaraj Nadar,
Old No.9, New No.26, Binny Nagar,
2nd Cross Street,
Madhavaram Milk Colony,
Chennai - 600 051.

... Petitioner in WP(MD). 20041 of 2021

Vs.

1.The Union of India,
Rep. by its Under Secretary,
Ministry of Agricultural and Farmers Welfare,
Department of Agriculture,
Krishi Bahvan,
New Delhi.

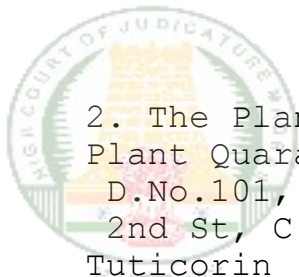
2.The Plant Protection Office,
Plant Quarantine Station,
Door No.101, Plot No.110, 2nd Street,
Tuticorin,
Thoothukudi District.

3.The Assistant Commissioner of Customs,
Tuticorin Customs Station House,
Tuticorin,
Thoothukudi District.

4.The VO Chidhambaranar Port,
Tuticorin-628 004,
Thoothukudi District.

...Respondents in W.P.(MD)10086 of 2017

1. The Union of India,
Rep. by its Under Secretary,
Ministry of Agriculture and Farmers Welfare,
Departmental of Agriculture,
Krichi Bhavan, New Delhi



2. The Plant Protection Officer,
Plant Quarantine Station,
D.No.101, Plot.No.110,
2nd St, C.G.E.Colony,
Tuticorin

...Respondents in WP(MD).Nos.21744/18,
10440/19, 13412/19, 21170/19, 21176/19,
4509/21, 6958/21 and 10708/21

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3. The Plant Protection Officer,
Plant Quarantine Station,
G.S.T. Road, Near Trident Hotel,
Meenambakkam, Chennai 600 027.

...3rd Respondent in WP(MD).Nos.9813/19,
17467/19, 18780/20, 6015/21, 10126/21, and
20041/21

Prayer in W.P. (MD).No.10086 of 2017 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of mandamus, directing the respondents to clear and release the consignments of populus nigar wood logs in light of the office memorandum issued by the first respondent in OM.No.8-131/2016-PP. II dated 30.03.2017 and consequently forbear the respondents from in any way detaining or withholding consignments of populus nigar wood logs.

Prayer in WP(MD)No . 21744 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for records pertaining to Condition No.3 of Office memorandum in O.M.No.8/131/2016-PP.II dated 28/06/2017 issued by the 1st respondent and quash the same as illegal.

Prayer in WP(MD)No . 9813 of 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for records relating to Condition No.3 of Office Memorandum in O.M.No. 8/131/2016-PP.II dated 27.12.2018 issued by the 1st respondent and quash the same as illegal.

Prayer in WP(MD).No. 10440 of 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records relating to condition No.3 of Office Memorandum in O.M.No.8/131/2016-PP.II dated 27/12/2018 issued by the 1st respondent under the Plant Quarantine (Regulation of Import into India) Order, 2003 and quash the same as illegal.

Prayer in WP(MD).No. 13412 of 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of



Certiorari calling for the records relating to condition No.3 of Office Memorandum in O.M.No.8/131/2016-PP.II dated 27.12.2018 issued by the 1st respondent under the Plant Quarantine (Regulation of Import into India) Order, 2003 and quash the same as illegal.

Prayer in WP(MD).No. 17467 of 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To calling for records relating to Condition No.3 of Office Memorandum in O.M.No.8/131/2016-PP.II dated 27/12/2018 issued by the 1st respondent adn quash the same as illegal.

Prayer in WP(MD).No. 21170 of 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records relating to condition no.3 of Office Memorandum of in O.M.No.8/131/2016-PP.II dated 27.12.2018 issued by the 1st respondent and quash the same as illegal

Prayer in WP(MD).No. 21176 of 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records relating to condition no.3 of Office Memorandum of in O.M.No.8/131/2016-PP.II dated 27.12.2018 issued by the 1st respondent and quash the same as illegal

Prayer in WP(MD).No. 18780 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari, calling for the records relating to condition No. iii of Office Memorandum No.8-325/2019-PP.II dated 19.06.2020 issued by the 1st respondent under the Plant Quarantine (Regulation of Import into India) Order, 2003 and quash the same as illegal and pass such further or other orders as this Honourable High Court may deem fit and proper to the circumstances of the case and thus render justice.

Prayer in WP(MD).No. 4509 of 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for records relating to condition no. 3 of Office Menorandum in O.M.no.8/131/2016-PP.II dt 28.6.2017 issued by the 1st respondent and quash the same as illegal and to pass any suth further or other order as this Honble Court deem fit and proper in the circumstances of this case and thus render justice

Prayer in WP(MD).No. 6015 of 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records relating to condition No. iii of Office Memorandum No.8-325/2019-P.P.II dated 16.12.2020 issued by



the 1st respondent under the Plant Quarantine (Regulation of Import into India) Order, 2003 and quash the same as illegal and pass such further or other orders as this Honble Court may deem fit and proper to the circumstances of the case and thus render justice.

Prayer in WP(MD).No. 6958 of 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue an order , writ or direction in the nature of a Writ of certiorari , calling for records relating to condition No.3 of Office Memorandum in O.M.No.8-325/2019 - PP.II dated 19/06/2020 issued by the 1st Respondent and quash the same as illegal and pass such further or other orders as this Honble Court deems fit and proper in the circumstances of the above case and thus render justice.

Prayer in WP(MD).No. 10126 of 2021 :

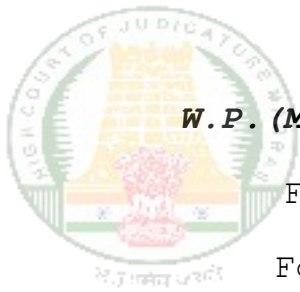
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARI calling for the records relating to condition No.III of Office Memorandum No.8-325 -2019-PP.II dated 16.12.2020 issued by the 1st respondent under the Plant Quarantine (Regulation of Import into India) Order, 2003 and quash the same as illegal and pass such further or other orders as this Honourable Court may deem fit and proper to the circumstances of the case and thus render justice.

Prayer in WP(MD).No. 10708 of 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for records relating to Condition No.3 of Office Memorandum in O.M.No. 8-325/2019-PP.II dt. 19.06.2020 issued by the 1st respondent and quash the same as illegal and pass such any or other orders as this Honble Court may deem fit and proper in the circumstances of the case and thus render justice.

Prayer in WP(MD).No. 20041 of 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, calling for the records relating to Article 14(2) of the Plant Quarantine (Regulation of Import into India) Order, 2003 imposing penalty at five times of normal rate issued by the 1st respondent and consequential condition no.3 of Office Memorandum in O.M.No.8-325/2019-PP.II dated 19.06.2020 issued by the 1st respondent and quash the same as illegal and pass such further or other orders as this Honble Court may deem fit and proper in the circumstances of the case and thus render justice.



W.P. (MD) .No.10086 of 2017

For Petitioner : Mrs.M.Mahaboob Athiff
For R1 & R2 : Mrs.B.Deepa
Junior Standing Counsel
For R3 : Mr.R.Aravindan

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WP(MD).No. 21744 of /2018

For Petitioner : Mr.G.Vidhyamaheswaran
For Respondents : Mr.P.Subbiah, CGSC

WP(MD).No. 9813 of 2019

For Petitioner : Mr.J David Ganesan
For Respondents : Mr.R.Senthilkumar, CGSC

WP(MD).No. 10440 of 2019

For Petitioner : Mr.R.D. Ganesan
For Respondents : Mr.S. Jeyasingh, Sr. Panel Counsel

WP(MD).No. 13412 of 2019

For Petitioner : Mr.R.D. Ganesan
For Respondents : Mr. A.P. Rajasimman, CGSC

WP(MD).No. 17467 of 2019

For Petitioner : Mr.J. David Ganesan
For Respondents : Mr.M. Ashok Kumar, CGSC

WP(MD).No. 21170 & 21176 of 2019

For Petitioner : Mr.J. Jeyakumaran
For Respondents : Mr.V.Malaiyendran, CGSC

WP(MD).No. 18780 of 2020, 6015 & 10126 of 2021

For Petitioner : Mr.R.D. Ganesan
For Respondents : Mrs.L.Victoria Gowri, ASGI



WP(MD).No. 4509 of 2021

For Petitioner : Mr.M.Arumugam
For Respondents : Mr.S. Jeyasingh, Sr. Panel Counsel

WP(MD).No. 6958 of 2021

For Petitioner : Mr.J. David Ganesan
For Respondents : Mrs.B. Deepa, CGSC

WP(MD).No. 10708 of 2021

For Petitioner : Mr.J. David Ganesan
For Respondents : Mr.G.Rajaraman, CGSC

WP(MD).No.20041 of 2021

For Petitioner : Mr.J. David Ganesan
For Respondents : Mrs.G.L. Victoria Gowri, ASGI

COMMON ORDER

The issue raised in this writ petition now covered by an order, dated 06.09.2021 in the case of **M/s.Best Timbers Vs The Union of India and others** in W.P.Nos.18405 of 2019 etc., batch.

2. This order was recently followed in the case of **N.S.Noor Mahamed Vs The Union of India and others**, which was dismissed on 19.04.2022 in W.P.(MD).No.14563 of 2017. The operative portion from the aforesaid order reads as under:

"In this Writ Petition, the petitioner has challenged the legality of Condition No.3 of the Office Memorandum in O.M.No.8-131/2016-PP.II, dated 28.06.2017, issued by the first respondent.

2.A learned Single Judge of this Court at Principal Seat in a batch of cases in **W.P.No.18405 of 2019 etc., batch [M/s.Best Timbers, Rep. its Partner, Mr.C.R.Krishna vs. Union of India, Rep. by its Under Secretary, Ministry of Agriculture and Farmers Welfare, New Delhi and the Plant Protection Officer, Plant Quarantine Station, Tuticorin and batch]** has passed an order dated 06.09.2021 and disposed the batch. Relevant portion of the order of the learned Single Judge reads as under:-

'WP No. 18405 of 2019 is filed questioning the validity and/or correctness of the condition No. (iii)

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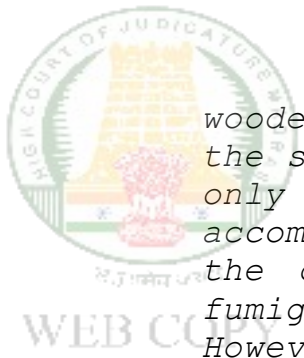
of the Office Memorandum dated 27.12.2018 issued by the first respondent in and by which penal fee was levied for those consignments covered under the bills of lading in the country of export, before 30th June 2019.

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2. Similar condition was imposed by the first respondent by issuing various other Office Memorandum and they are the subject matter of the other writ petitions.

3. The petitioners in these writ petitions are importers, importing timbers and other goods from various countries across the world. Earlier, wooden logs were procured from local resources within the country. However, felling of spontaneous trees for industrial purpose has been prohibited by virtue of the judgment of the Honourable Supreme Court in the case of T.N. Godavarman Thirumalpad vs. Union of India. Therefore, the importers like the petitioners have resorted to import wooden logs from countries like Latin America, Western Africa etc., It is contended that the wood required for the Industry has to be fumigated/treated with "Methyl bromide" but it is prohibited in the European Countries and therefore, the wooden logs could not be subjected to fumigation at the port of Boarding. Taking note of the difficulties faced by the importers, the first respondent in exercise of the power conferred under Order 14 of the Plant Quarantine Regulation of Import into India Order, 2003, granted relaxation of fumigation norms at the port of Boarding and permitted fumigation at the Port of discharge. Having relaxed the fumigation norms for some time, the first respondent imposed certain conditions for importing timber/wooden logs. One of the conditions being imposition of penalty for fumigation of the wooden logs. Contending that the Plant Quarantine Regulations of Import into India Order, 2003 does not provide any power or authority to the first respondent to levy any penalty, the petitioners are before this Court with this batch of writ petitions.

4. The learned counsel for the petitioner would vehemently contend that the Plant Quarantine (Regulation of Import into India) Order 2003 framed under Sub~Section (1) of Section 3 of the Destructive Insects and Pests Act, 1914 (2 of 1974) regulates the import of various agricultural articles including



wooden logs into India. In Para No.9, Chapter VI of the said Regulation, timber can be imported into India only if it is appropriately fumigated/treated and is accompanied by a phytosanitary certificate issued at the country of export. It is contended that such fumigation is prohibited in European Countries. However, the first respondent relaxed such condition periodically and permitted import of wooden logs and other products. While so, by the impugned Office Memorandum dated 27.12.2018, which is impugned in WP No. 18405 of 2019 as well as by issuing similar other Office Memorandum, the first respondent imposed certain conditions for relaxing the off shore fumigation. One of conditions is that the consignment will be charged with penalty/inspection fee. According to the petitioners, while granting relaxation earlier, the first respondent did not impose any such penalty or levy. The first respondent also did not assign any new reason for imposition of penalty in the Office Memorandums, which are impugned in these writ petitions. Therefore, challenging the condition No.3 of the Office Memorandum issued by the first respondent, the petitioners have filed the present writ petitions.

5. The learned Central Government Standing Counsel appearing for the respondent in WP No. 18405 of 2019 as well as the other counsel appearing for the respondents, in unison, would oppose the prayers sought for in these writ petitions. By placing reliance on the counter affidavit filed by the respondents in WP No. 18405 of 2019, it is contended that the Plant Quarantine Regulatory Measures in India formed the basis for enactment of The Destructive Insects and Pests Act, 1914. Section 3 of the said Act provides the power to the Central Government to regulate or prohibit import of articles which are likely to cause infection. The Plant Quarantine Order, 2003 was issued in exercise of the powers conferred under The Destructive Insects and Pests Act, 1914. to regulate import and prohibit import of plants and plant products into India. It is in this direction, the Office Memorandums, which are impugned in these writ petitions, were issued to act as a deterrent to import of woods without fumigation. At the same time, taking note of the need for wood in the Country, it was decided to enhance the inspection fee on import of all agricultural commodities including timber as they are imported in violation of the Plant



Quarantine Order, 2003. Above all, it is contended that the importing Country has a right to impose conditions to safe guard its bio~security and it cannot be called in question by the petitioners. It is stated that when any consignment from India reaches the other country without complying with the formalities or requirements, the importing country would either destroy or deports the consignment. In the present case, with the object of protecting bio~security of the Country, restricted use of Methyl Bromide is resorted to. It is further stated that initially, relaxation was granted for those bills of lading issued by the country of Export upto 31.12.2019 and thereafter, it was decided to allow fumigation at the port of discharge with penalty. However, the petitioners have not challenged the Office Memorandum fixing a cut off date as 31.12.2019. In any event, the office memorandums were issued in exercise of the powers provided under Clause 14 (2) of Chapter VI of the Plant Quarantine Order, 2003 wherein it is specifically provided that in the event of grant of relaxation by the competent authority, the consignment shall be released after charging the fee for import permit and fee for plant quarantine inspection at five times of normal rates. While so, it is futile on the part of the petitioners to contend that penalty was imposed by the first respondent without any authority of law. Therefore, the learned counsel for the respondents prayed for dismissal of these writ petitions.

6. Heard the learned counsel appearing for the respective petitioners as well the learned counsel for the respondents and perused the materials on record. The main contentions putforth on behalf of the petitioners in these writ petitions is that the penalty clause incorporated in the Office Memorandums issued by the first respondent is arbitrary and the first respondent is not empowered to impose any penalty or fee while granting relaxation of the fumigation norms. Such a contention urged on behalf of the petitioners in these writ petitions cannot be countenanced inasmuch as Clause 14 (2) of Chapter VI of the Plant Quarantine Order, 2003 empowers the first respondent to impose levy as a condition precedent for permitting the import of the wooden logs. Thus, a discretion has been conferred to the first respondent to impose levy and it cannot be called in question by the petitioners. In such view of the matter, this



Court is not inclined to grant the relief, as prayed for in these writ petitions.

7. At this stage, the learned counsel for the respective petitioners prayed this Court to permit the petitioners to challenge the vires of the Plant Quarantine Order, 2003 or any other Rules which empower the first respondent to levy penalty, if they are so advised.

8. Granting such liberty to the petitioners, all these writ petitions are disposed of. No costs. Consequently, all the connected miscellaneous petitions are closed."

3. The petitioner's case is not different from the above cases decided by the learned Single Judge of this Court vide order **dated 06.09.2021 in W.P.No.18405 of 2019 etc., batch.** Under these circumstances, I am inclined to dismiss this Writ Petition by giving a liberty to the petitioner to challenge the vires of the Plant Quarantine (Regulation of Import into India) Order, 2003 or any other Rules which empowers the first respondent to levy penalty, if so advised, in terms of the above said order **dated 06.09.2021, made in W.P.No.18405 of 2019 etc., batch.**

4. This Writ Petition stands dismissed with the above observation. No costs. Consequently, connected Miscellaneous Petitions are closed."

3. In the light of the above, these writ petitions are dismissed by giving liberty to the petitioner to challenge the vires of the Plant Quarantine (Regulation of Import into India) Order, 2003 or any other Rules which empowers the first respondent to levy penalty, if so advised, in terms of the above said order dated 06.09.2021, made in W.P.No.18405 of 2019 etc., batch. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar (CS)

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To

- 1.The Under Secretary,
The Union of India,
Ministry of Agricultural and Farmers Welfare,
Department of Agriculture,
Krishi Bahvan,
New Delhi.
 - 2.The Joint Secretary, (Plant Protection),
The Union of India,
Department of Agricultural Co-operation & Farmers Welfare,
Ministry of Agricultural and Farmer Welfare,
No.238, Krishi Bhavan, New Delhi.
 - 3.The Plant Protection Office,
Plant Quarantine Station,
Door No.101, Plot No.110, 2nd Street,
Tuticorin,
Thoothukudi District.
 - 4.The Plant Protection Officer,
Plant Quarantine station,
G.S.T. Road, Near Trident Hotel,
Meenambakkam, Chennai-27.
 - 5.The Assistant Commissioner of Customs,
Tuticorin Customs Station House,
Tuticorin,
Thoothukudi District.
 - 6.The VO Chidhambaranar Port,
Tuticorin-628 004,
Thoothukudi District.
- +1 CC to M/s.B. DEEPA, Advocate (SR-20637[F] dated 22/04/2022)
+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-20802[F] dated
25/04/2022)
+1 CC to M/s.M.ASHOKKUMAR, Advocate (SR-20846[F] dated 25/04/2022)

+1 CC to M/s.A.P.RAJASIMMAN, Advocate (SR-21642[F] dated
27/04/2022)

+1 CC to M/s.R.D.GANESAN, Advocate (SR-20372[F] dated 22/04/2022)

+1 CC to M/s.S.JEYASINGH, Advocate (SR-20375[F] dated 22/04/2022)

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22.04.2022

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