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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15414 OF 2023

M/s.Indusina Exim L.L.P.

...Petitioner

Versus

The Commissioner of Customs (Import) & Ors.

...Respondents

Mr.Pankaj Jain a/w Mr.Bhavin Doshi i/by P.D. Jain & Co. for the
Petitioner.

Mr.Dhananjay B. Deshmukh for the respondents.

CORAM : G. S. KULKARNI &
JITENDRA S. JAIN, JJ.

DATE : DECEMBER 08, 2023

P.C.:

. By this petition under Article 226 of the Constitution of
India, the petitioner has prayed for the following substantive reliefs :-

“1) That this Hon’ble Court may be pleased to issue a Writ of Mandamus or any other appropriate writ or order or directions, directing the Respondent Agency and more particularly to 2nd Respondent to grant Provisional Release of the goods covered by Ex.A, Bill of Entry No.8733339 on 11-11-2023 for home consumption.”

2. Brief facts are as under :-

(i) The petitioner is engaged in the business of import and export. On 11th November 2023, the petitioner filed Bill of Entry No.8733339 for clearance of apples imported from Iran.

(ii) On 24th November 2023, the petitioner filed a reply with respondent no.2 in response to a query raised with regard to valuation of goods imported in the light of Notification No.5/2023 which caps the minimum price of apples for the purposes of import at Rs.50/- per kg.

(iii) The petitioner brought to the notice of respondent no.2 the decision of Kerala High Court dated 11th July 2023 Writ Petition No.22281 of 2023 in the case of ***M/s.Indusina Exim L.L.P. Vs. Union of India & Anr.*** dated 11th July 2023 by which the said notification was stayed. The petitioner, therefore, requested respondent no.2 to release the goods as the same are perishable in nature.

(iv) On 27th November 2023, the petitioner once again requested for 'Provisional Assessment' of the goods based on the minimum import price notified in the notification and requested respondent no.2 to release the goods to avoid further delay as well as to reduce detention and demurrage charges. However, there was no response from the respondents to such request. It is on this back drop, the present petition is filed seeking release of the goods imported vide Bill of Entry No.8733339.

3. The petitioner submits the goods imported are perishable in nature. Further, the petitioner would contend that Notification No.5/2023 which puts cap of Rs.50/- per kg. as minimum import price

for import of apples has been stayed by Keral High Court. The petitioner further contended that the petitioner is willing to furnish bond to respondent no.2 for release of the goods. The petitioner would, therefore, contend that the goods be released on provisional basis as prayed for.

4. Per contra, the respondents would oppose the prayer sought for by relying on Notification No.5/2023 which imposes minimum cap of Rs.50/- per kg. for import of Apples whereas the petitioner has imported the goods at less than Rs.50/- per kg. However, the respondents has not disputed that the notification has been stayed by the Kerala High Court.

5. We have heard learned counsel for the petitioner and the respondents.

6. In our view, the petitioner is entitled to provisional release of goods as prayed for for more than one reason. Notification No.5/2023 which imposes minimum price of Rs.50/- per kg for import of apples has been stayed by the Kerala High Court. Secondly, only issue is with respect of valuation and goods being perishable in nature and further the petitioner is willing to comply with the terms and conditions to be put

forth by respondent no.2 for provisional assessment of goods there does not seem to be justifiable release to detain the goods. In the light of these facts, it would be in the interest of justice that the petition be allowed in terms of prayer clause (1).

7. We, therefore, direct Respondents to provisionally assess the Bill of Entry No.8733339 within a period of four days from today and release the goods on the petitioner furnishing the bond.

8. Petition is disposed in above terms. No order as to costs.

[JITENDRA S JAIN, J.]

[G. S. KULKARNI, J.]