



W.P.No.683 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.683 of 2020
and
W.M.P.No.816 of 2020

Syed Ali,
Proprietor, Green Overseas,
No.5/54, R.S.K.Complex,
Puthur Main Road,
Dr.Varaprasad Nagar, Attanthangal,
Red Hills, Chennai – 600 052.

... Petitioner

Vs.

1.The Union of India,
Rep. by it's Under Secretary,
Ministry of Agriculture and Farms Welfare,
Krishi Bhavan, New Delhi.

2.The Plant Protection Officer,
Plant Quarantine Station,
G.S.T.Road, Minambakkam,
Chennai – 27.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for records in respect of condition No.3 of Office Memorandum in O.M.No.8/131/2016-PP.II dated 01.07.2019 issued by the first respondent and quash the same.



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For Petitioner : Mr.R.Vijayaraghavan

For Respondents : Mr.T.L.Thirumalaisamy

ORDER

The Writ Petition is filed seeking for a Writ of Certiorari, to call for records in respect of condition No.3 of Office Memorandum in O.M.No.8/131/2016-PP.II dated 01.07.2019 issued by the first respondent and quash the same.

2. The case of the petitioner is that, it is a Company engaged in import of Timbers and other related goods from various countries across the world to Chennai Port Trust, Tuticorin Port Trust and other Ports of India. Order 9 of the Plant Quarantine (Regulation of Import into India) provides that, a timber is to be imported into India, only when the timber has been appropriately fumigated/treated and is accompanied by a phytosanitary certificate issued at the country of export. However, order 9(2), provides that if on inspection, it is found that the wood has not been fumigated, it shall be fumigated/treated at the port/container freight station or Inland container depot and as per the Plant Quarantine Order of 2003 vide order 14, empowers the first respondent to grant relaxation of any of the



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conditions stipulated by the order. However, taking into account the difficulties faced by the industry and having regard to the fact that Methyl Bromide fumigation is prohibited in the European Union and Latin America and it is impossible to have off shore fumigation using Methyl Bromide on the agricultural products covered by the order of 2003, the first respondent in exercise of its powers under order 14 of the Plant Quarantine Regulation of Import into India order, 2003, granted relaxation of fumigation regulation. By the said relaxation accorded, the Government had relaxed the requirement under 9 for off shore fumigation and had permitted import of wooden logs and other products warranting methyl bromide fumigation. The said relaxation has been granted subject to five conditions one of them being the impugned condition that the consignment will be charged with penalty. Aggrieved by the same, the present writ petition is filed.

3. The learned counsel for the petitioner submits that, the issue involved in this writ petition has already been decided by this Court in W.P.No.18405 of 2019, etc., batch of cases and that the same order may be passed in the above writ petition as well.



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4. The learned counsel appearing for the respondents did not dispute the facts submitted by the learned counsel for the petitioner.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. This Court, in W.P.No.18405 of 2019, etc., batch of cases, by an order dated 06.09.2021, in the case of ***M/s.Best Timbers Vs. The Union of India & 2 Ors.***, in paragraph Nos.6 to 8, has held as follows :

“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.



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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.”

7. In view of the above order having been passed, this Court is inclined to dispose of this writ petition in the same line.

8. Accordingly, the Writ Petition is disposed of granting liberty to the petitioner to challenge the vires of the Plant Quarantine Order, 2003 or any other Rules which empower the first respondent to levy penalty, if he is so advised. No costs. Consequently, the connected miscellaneous petition is closed.

11.04.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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M.DHANDAPANI, J.

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To

- 1.The Under Secretary,
Ministry of Agriculture and Farms Welfare,
Krishi Bhavan, New Delhi.
- 2.The Plant Protection Officer,
Plant Quarantine Station,
G.S.T.Road, Minambakkam,
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