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W.P.No.4711 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.4711 of 2022
and
W.M.P.No.4822 of 2022

M/s.Aqualine Exports
6/194 Pananghat
Akkikavu, Thissur, Kerala – 680 519
Represented by its Managing Partner
Santhosh Baby

... Petitioner

Vs.

- 1.Ministry of Finance
Department of Revenue
Room No.46, North Block
New Delhi – 110 001
- 2.Commissioner of Customs
Custom House,
No.60 Rajaji Salai, Chennai-600 001
- 3.Deputy Commissioner of Customs
Chennai Customs Department
Air Cargo Complex
Meenambakkam, Chennai-600 027
- 4.Senior Intelligence Officer (SIO)
Air Cargo Intelligence Unit (ACIU)
Air Cargo Complex,
Meenambakkam, Chennai-600 027



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5.Vivek Tiwari

Air Cargo Intelligence Unit (ACIU)

Air Cargo Complex

Meenambakkam, Chennai-600 027

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records leading up to impugned Seizure Memorandum dated 29.12.2021 issued by the 4th Respondent and quash the same and consequentially direct the Respondents to drop all further proceedings.

For Petitioner : Mr.Saiby Jose Kindangoor

For Respondents : Mr.V.Sundareswaran (for R1 to R3)
Senior Panel Counsel

ORDER

The petitioner is aggrieved by the impugned seizure memorandum dated 29.12.2021.

2. The specific case of the petitioner is that the petitioner had been exporting ornamental fish, which is called as Malabar Puffer Fish, whose biological name is *Carinotetraodon Travancoricus*. A consignment of this fish was seized at the time when the country was still under the throes of Covid-19 pandemic. It is submitted that this particular fish was neither prohibited under the provisions of the Wildlife Protection Act, 1972, Foreign Trade Policy or Indian Trade Classification (ITC) issued under the Foreign Trade Policy. It is submitted that this exotic fish was also not prohibited



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under any of the notifications issued under the Customs Act, 1962. It is submitted that therefore, the impugned seizure memorandum was liable to be quashed. It is submitted that despite a stay being granted by this court on 03.03.2022, the respondent have now issued a show caused notice dated 11.05.2023.

3. Learned Counsel for the petitioner had made a valiant effort to convince the Court that the subject fish was not a prohibited item and therefore, the seizure memorandum and the subsequent show cause notice issued on 11.05.2023 were without jurisdiction and therefore cannot be proceeded further. On a query as to the life span of the seized fish vide the impugned memorandum, learned counsel for the petitioner submitted that the average life span is eight months.

4. Learned counsel for the respondents has produced a communication of the Deputy Commissioner, Special Investigation Branch (SIB), Madurai and Surveillance, Intelligence and Investigation Bureau attached to the Commissionerate, wherein they have stated that the seized fish were handed over to the Zoological Park, Guindy, Chennai. It is submitted that nothing further survives in this petition.

5. I have considered the rival submissions advanced by both the learned counsel.



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6. Although the petitioner may have a case on merits, issue as to whether the seized fish was a prohibited fish or not cannot be determined under Article 226 of the Constitution of India. The petitioner has to meet out the allegations in the show cause notice by filing a reply. This Court cannot pass any orders on merits as to whether the seized fish was prohibited or not.

7. This Writ petition is therefore liable to be dismissed and this Writ Petition is dismissed. No costs. The respondent shall dispose of the show cause notice dated 11.05.2023 within a period of six months from the date of receipt of a copy of this order. The petitioner is at liberty to file a reply to the impugned show cause notice dated 11.05.2023 within a period of thirty (30) days from the date of receipt of a copy of this order. Needless to say that before passing any order, the petitioner shall be heard in person. Connected Miscellaneous petition is closed.

07.07.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
mpl



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C.SARAVANAN, J.

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