



WEB COPY



WP.No.10215 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.03.2023

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.10215 of 2023

M.R.J.Trading,
Represented by its Proprietor,
Abdulla Jasim M.P
1/85-A, KunnathKavu Temple,
Kollanur, Palakkad Ponnani Road,
Eravakkad Post, Kappur,
Palakkad, Kerala-679552.

... Petitioner

Vs

1.The Commissioner of Customs
Chennai II Commissionerate
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

2.The Deputy Commissioner of Customs (Group 1)
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

3.The Deputy Commissioner of Customs (Group 1)
Custom House, Port Area,
Vishakapatnam - 530 035.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Mandamus directing the 3rd respondent to



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provisionally release the goods covered by bill of entry no.4558512 dated 08.02.2023 in terms of Section 110A of the Customs Act 1962.

For Petitioner : Mr.Hari Radhakrishnan
For Respondents : Mr.S.R.Sundar
Senior Standing Counsel

ORDER

Mr.S.R.Sundar, learned Senior Standing Counsel accepts notice for the respondents and is armed with requisite instructions to enable final disposal of this matter, even at the stage of admission.

2. The petitioner is a proprietary concern and had imported black pepper through the Port of Chennai under Bill of Entry No.4558512 dated 08.02.2023. According to the petitioner, the black pepper is of Sri Lankan origin, classifiable under customs tariff heading (CTH) 0904 1190. Unit price was declared around Rs.430/- per kg.

3. A query was raised at the time of clearance by the Faceless Assessment Group (FAG) in the online Electronic Data Interface (EDI) to the effect that the Declared Minimum Import Price (MIP) was lower than the import policy and hence clarification was required.



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4. This query flows from Notification No.21/2015-2020 dated 25.07.2018, as per which, import of black pepper is permitted freely only if the CIF value is in excess of Rs.500/- per kg.

5. In the meanwhile, the petitioner has filed Writ Petitions, both before the Kerala High Court as well as this Court. The Kerala High Court in W.P.(c) No.23023 of 2018 is stated to have stayed the Notification on 19.07.2018. The Writ Petition pending before this Court in W.P.No.5561 of 2023, challenging Notification Nos.42/2015-2020 dated 06.12.2017, 50/2015-2020 dated 05.02.2018, 53/2015-2020 dated 21.03.2018 and 21/2015-2020 dated 25.07.2018 is directed to be listed on 26.04.2022 for counter.

6. In the meantime and pending disposal of the challenge to the Notifications itself, the petitioner has filed a representation on 08.02.2023 for provisional release of the goods. Since the respondent has not passed any orders on the same, the present Writ Petition has been filed.

7. Mr.Sundar would point out to the apparent violation of the import policy as a defence to the prayer of the petitioner. However, the provisions of Section 110A of the Customs Act, 1962 entitle the respondents to deal with a request for provisional release exercising discretion as they may think fit, and



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in accordance with law. The provision states that any goods, documents or things seized or bank account provisionally attached under section 110, may, pending orders of the adjudicating authority, be released to the owner or the bank account holder on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require.

8. Thus, the authority is at full liberty to decide the question of release in a manner which is in accordance with law and either order release on terms, confiscate re-export or adopt any other mode of action as he may believe appropriate.

9. Seeing as the goods are perishable, let an order be passed, after affording an opportunity of hearing to the petitioner, within a period of four (4) weeks from date of receipt of a copy of this order.

10. This Writ Petition stands disposed as above. No costs.

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Index : Yes / No
Speaking/non-speaking Order
Neutral Citation: Yes/No
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Dr.ANITA SUMANTH,J.

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