IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.22946 of 2023
and
W.M.P.Nos.22447 and 22451 of 2023

M/s.N and N Traders,
Represented by its Proprietor
Nisam Kassim,
No.KP-III/53, Jama-ath Building,
Kulathupuzha Post, Kollam - 691 310
Kerala. ... Petitioner

Vs.

1.The Assistant Commissioner of Customs (Group 1),
Custom House, 15/1 Strand Road,
Kolkata - 700 001.

2.The Assistant Commissioner of Customs (Gr.1),
Chennai II Commissionerate,
Custom House, 60 Rajaji Salai,
Chennai - 600 001.

3.The Commissioner of Customs,
Chennai II Commissionerate,
Custom House, 60 Rajai Salai,
Chennai - 600 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned provisional assessment made in bill of entry no.6427619 dated 15.06.2023 by the first respondent and quash the same and further direct the first and second respondents to finally assesse the bill of entry no.6427619 dated 15.06.2023 after extending the benefit of Notification No.26/2000-Cus dated 01.03.2000.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Ms.Anu Ganesan
Junior Panel Counsel

ORDER

This Writ Petition is disposed of after dispensing with the requirement of filing of counter affidavit based on the submission of the learned counsel for the petitioner and the learned Junior Panel Counsel for the respondents.

2. It is noticed that the petitioner has filed Bill of Entry bearing No.6427619 on 15.06.2023 for clearing a consignment of arecanut. The petitioner has classified imported consignment of arecanut under heading No.08028090. The petitioner has claimed exemption under Notification No.26/2000-Cus dated 01.03.2000. The Bill of Entry has been provisionally

assessed. The petitioner has been called upon to furnish a Bank Guarantee for Rs.2,45,40,003.60/- and a bond for Rs.2,33,71,432/-.

3. The specific case of the petitioner is that the imported consignment of arecanut is exempted under Notification No.26/2000-Cus dated 01.03.2000 and attracts Nil duty.

4. The petitioner has drawn attention to a copy of the Certificate of Origin given by the Assistant Director of Commerce, Colombo pursuant to Indo-Sri Lanka Free Trade Agreement (ISFTA). It is submitted that the said Certificate of Origin has not been cancelled.

5. The learned counsel for the petitioner submits that both the imports made prior to and after the imports covered by the subject Bill of Entry have been allowed to be cleared as detailed below:-

Table-1

Sl.No.	***Date***	***Bill of Entry No.***
1	15/06/23	6427619
2	20/06/23	6500494
3	20/07/23	6684658

6. The learned counsel for the petitioner further submitted that a

specific dispensation has been provided under Chapter V-AA of the Customs Act, 1962, which contemplates the procedure regarding claim of preferential rate of duty. It is submitted that sub-section 4 to Section 28DA of the Customs Act empowers the Proper Officer to temporarily suspend the preferential tariff treatment if an importer fails to provide any information called for by the Proper Officer.

7. In this case, no such information has been called for from the petitioner and therefore, without suspending the preferential tariff treatment in terms of sub-section 4 to Section 28DA of the Customs Act, the petitioner cannot be called upon to furnish the Bank Guarantee for Rs.2,45,40,003.60/-. The learned counsel for the petitioner submits that the petitioner is willing to execute any other security as may be imposed by this Court.

8. The learned Junior Panel Counsel for the respondents would submit that the goods have been only provisionally ordered to be released and it is open for the petitioner to provide security that has been specified in the Bills of Entries.

9. It is submitted that no prejudice or harm will be caused to the

petitioner if the petitioner furnishes security by way of Bank Guarantee as called for as the petitioner is not entitled to the benefit of Notification No.26/2000-Cus dated 01.03.2000 on the imported consignment of arecanut.

10. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Junior Panel Counsel for the respondents.

11. There are no records to show that the petitioner was called for to furnish information, which the petitioner has failed to furnish. There is also no suspension of preferential tariff treatment of the imported goods in terms of Section 28DA of the Customs Act, 1962. The Court is therefore inclined to direct the respondents to re-assess the Bill of Entry dated 15.06.2023 provisionally in accordance with the procedure prescribed under Section 28DA of the Customs Act, 1962 and the rules made thereunder and thereafter allow clearance of the imported consignment of arecanut. While re-assessing the subject Bill of Entry, the respondents shall also consider the decisions taken in respect of Bills of Entry dated 20.06.2023 and 02.07.2023 as in Table-1 of this order.

12. This exercise shall be carried out by the respondents within a period of fifteen days from the date of receipt of a copy of this order.

13. This Writ Petition is disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

24.08.2023

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

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Note: Issue Order Copy on 28.08.2023.

To

1.The Assistant Commissioner of Customs (Group 1),
Custom House, 15/1 Strand Road,
Kolkata - 700 001.

2.The Assistant Commissioner of Customs (Gr.1),
Chennai II Commissionerate,
Custom House, 60 Rajaji Salai,
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C.SARAVANAN, J.

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