IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2023

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.Nos.25771, 25607, 25610 & 25777 of 2023
and WMP.Nos.25200, 25201, 24996, 24997,
25003, 25007, 25211 and 25206 of 2023

M/s.Shubh Trading Company,
Rep by its Proprietor Mr.Sanjay Gupta
... Petitioner in WP.No.25771 of 2023

M/s.Uday International
Rep by its Partner Mr.Jayesh Panchmatia
... Petitioners in WP.Nos.25607, 25610 and 25777 of 2023

Vs

1.The Commissioner of Customs (imports)
Custom House, No.60 Rajaji Salai,
Chennai – 600 001.

2.The Additional Commissioner of Customs,
Group – 1, Custom House, No.60 Rajaji Salai,
Chennai – 600 001.

3.The Deputy Commissioner of Customs,
Group -1, Custom House, No.60 Rajaji Salai,
Chennai – 600 001.

4.The Deputy Commissioner of Customs,
Group -1, Custom House,
Kolkatta.
... Respondents in WP.Nos.25771, 25610 & 25777 of 2023

1.The Commissioner of Customs (imports)
Custom House, No.60 Rajaji Salai,
Chennai – 600 001.

2.The Additional Commissioner of Customs,
Group – 1, Custom House, No.60 Rajaji Salai,
Chennai – 600 001.

3.The Deputy Commissioner of Customs,
Group -1, Custom House, No.60 Rajaji Salai,
Chennai – 600 001.

... Respondent in WP.No.25607 of 2023.

Prayer in WP.No.25771 of 2023 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order of Assessment dated 18.07.2023 passed by the 4th respondent herein pertaining to the import of 300 bags viz., 18 MTs of Areacanuts of Srilankan Origin imported vide bill of Entry No.6932794 dated 18.07.2023 without extending the Benefit of NIL Rate of Customs Duty as per Notification No.26/2000-Cus, dated 01.03.2000, even after the petitioner fully complying with the conditions as per the Notification and to quash the same as illegal, arbitrary, unfair, unreasonable, violation of principles of natural justice and in excessive of jurisdiction and also without complying with the procedures of CBEC, Delhi and direct the respondents to release the goods viz., 300 Bags viz., 18 MTs of Arecanuts of Srilankan Origin extending the benefit of Sl.No.1 of Customs Notification No.26/2000 dated 01.03.2000 by accepting the Electronic Country of Origin (e-Co-O) issued by Srilankan Government under ISFTA and pass such further or other orders.

Prayer in WP.No.25607 of 2023 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order of Assessment dated 18.07.2023 passed by the 3rd respondent herein pertaining to the import of 300 bags viz., 18 MTs of Areacanuts of Srilankan Origin imported vide bill of Entry No.6932817 dated 18.07.2023 without extending the Benefit of NIL Rate of Customs Duty as per Notification No.26/2000-Cus, dated 01.03.2000, even after the petitioner fully complying with the conditions as per the Notification and to quash the same as illegal, arbitrary, unfair, unreasonable, violation of principles of natural justice and in excessive of jurisdiction and also without complying with the procedures of CBEC, Delhi and direct the respondents to release the goods viz., 300 Bags viz., 18 MTs of Arecanuts of Srilankan Origin extending the benefit of Sl.No.1 of Customs Notification No.26/2000 dated 01.03.2000 by accepting the Electronic Country of Origin (e-Co-O) issued by Srilankan Government under ISFTA and pass such further or other orders.

Prayer in WP.No.25610 of 2023 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order of Assessment dated 18.07.2023 passed by the 4th respondent herein pertaining to the import of 300 bags viz., 18 MTs of Areacanuts of Srilankan Origin imported vide bill of Entry No.6932822 dated 18.07.2023 without extending the Benefit of NIL Rate of Customs Duty as per Notification No.26/2000-Cus, dated 01.03.2000, even after the petitioner fully complying with the conditions as per the Notification and to quash the same as illegal, arbitrary, unfair, unreasonable, violation of principles of natural justice and in excessive of jurisdiction and also without complying with the procedures of CBEC, Delhi and direct the respondents to release the goods viz., 300 Bags viz., 18 MTs of Arecanuts of Srilankan Origin extending the benefit of Sl.No.1 of Customs Notification No.26/2000 dated 01.03.2000 by accepting the Electronic Country of Origin (e-Co-O) issued by Srilankan Government under ISFTA and pass such further or other orders.

Prayer in WP.No.25777 of 2023 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order of Assessment dated 18.07.2023 passed by the 4th respondent herein pertaining to the import of 360 bags viz., 18 MTs of Areacanuts of Srilankan Origin imported vide bill of Entry No.6932310 dated 18.07.2023 without extending the Benefit of NIL Rate of Customs Duty as per Notification No.26/2000-Cus, dated 01.03.2000, even after the petitioner fully complying with the conditions as per the Notification and to quash the same as illegal, arbitrary, unfair, unreasonable, violation of principles of natural justice and in excessive of jurisdiction and also without complying with the procedures of CBEC, Delhi and direct the respondents to release the goods viz., 360 Bags viz., 18 MTs of Arecanuts of Srilankan Origin extending the benefit of Sl.No.1 of Customs Notification No.26/2000 dated 01.03.2000 by accepting the Electronic Country of Origin (e-Co-O) issued by Srilankan Government under ISFTA and pass such further or other orders.

For Petitioners : Mr.A.K.Jayaraj – in all the cases.

For Respondents : Mr.V.Sundareswaran, Sr.SC
- in all the cases.

**COMMON ORDER**

In all these writ petitions, the petitioners have imported consignments of arecanuts from Republic of Sri Lanka.

2. The petitioners have filed Bills of Entry claiming exemption under Notification No.26/2000-Customs dated 01.03.2000. As on date, as per the aforesaid notification, the goods imported by the petitioners *prima facie* appears to be exempted in terms of List-5 i.e., All goods other than a) goods mentioned in lists 1, 2, 3 and 4 b) goods listed in Annexure appended to the notification.

3. It is the contention of the petitioners that despite the imports being exempted in terms of List-5 of Notification No.26/2000-Customs dated 01.03.2000, the respondents are insisting the petitioners on providing 100% Bank Guarantee for the value of the consignments/goods declared in the respective Bills of Entry at the time of assessment.

4. The learned counsel for the petitioners submits that the Central Board of Indirect Taxes and Customs, International Customs Division has also issued a clarification in Instruction No.15/2023-Customs bearing Ref.F.No.CBIC-15021/48/2020-ICD-CBEC wherein, in Paragraph 1, it has been clarified as follows:-

> "Instances have been brought to the notice of the Board where the benefit of preferential tariffs in respect of goods eligible for such benefits when imported from Sri Lanka is not being accorded by some of the field formations on the ground that the Certificate of Origin is produced in an electronic form (and not in hard copy). It is hereby clarified that an electronic certificate of origin or e-CoO, issued by the Issuing Authority of Sri Lanka, is a valid document for the purpose of claiming preferential benefit under the India-Sri Lanka FTA subject to it having been issued in the prescribed format, bearing seal and signatures of the authorized signatory of the Issuing Authority, and fulfilling all other requirements stated in Notification No.19/2000-Customs (N.T.) dated 01.03.2000."

5. It is submitted that despite the above clarification, the legitimate benefit of exemption under Notification No.26/2000-Customs dated 01.03.2000 has been denied to the petitioners, asking the petitioners to furnish Bank Guarantee for the value of the consignments.

6. The details of the respective Bills of Entry and the Containers,

the Bills of Lading and the amount of Bank Guarantee asked to be furnished by the petitioners as detailed below:-

| Sl. No | W.P. Nos. | Bill of Entry No with date | Bill of Lading No with date | Container No. | Classification | Bank Guarantee Amount |
|---|---|---|---|---|---|---|
| 1 | 25771 of 2023 | 6932794 / 18/07/2023 | AAACMBMAA01683/ 14/07/2023 | MBIU8274045 | Arecanuts | Rs.1,63,30,579/- |
| 2 | 25777 of 2023 | 6932310 / 18/07/2023 | JCL20697CMBMAA/ 14/07/2023 | CLHU3412620 | Srilankan Arecanuts | Rs.1,63,30,579/- |

7. That apart, it is submitted that the petitioners had imported seven other consignments of arecanuts from the same supplier from the same Country covered by the following Bills of Entries :

| Sl. No. | Bill of Entry No with date | Bill of Lading No with date | Name of the Importer |
|---|---|---|---|
| 1 | 6362533 / 11/06/2023 | AAACMBMAA01566 | Shubh Trading Company |
| 2 | 6786028 / 09/07/2023 | AAACMBMAA01657 | Shubh Trading Company |
| 3 | 6500500 / 20/06/2023 | MIBLCMBMAA230028 | Uday International |
| 4 | 6574548 / 24/06/2023 | AAACMBMAA01599 | Uday International |

8. The learned counsel for the respondents on the other hand would submit that the Directorate of Revenue Intelligence (DRI), on the basis of the intelligence found that the imports of Arecanuts from Sri Lanka were disproportionate to the total production Arecanuts from Sri Lanka and

had therefore issued an alert Circular No.34/2015-CI dated 29/30.12.2015 and alerted the field formation under CBIC about the potential routing of Arecanuts originating from other countries through Sri Lanka to avoid import duties.

9. It is further submitted that DRI had advised the field formations to refer the certificates for origin to International Customs Division to verify the genuineness of the certificates with the Issuing Authority, to this effect an alert was issued electronically by the Risk Management System to the Assessing Officer attending the assessment of Bills of Entry.

10. It is therefore submitted that the subject Bill of Entry were thus assessed provisionally assessed and the matter has been referred for verification of genuineness of the e-CoO's in terms of COROTA Rules vide Notification No.81/2020 dated 21.08.2020 to FTA.

11. It is submitted that under these circumstances, the security for the differential duty at 105% has been asked to be furnished in the form of Bank Guarantee in terms of S.No.5(c) of the CBIC Circular No.38/2016 dated 22.08.2016.

12. That apart, the learned counsel for the respondents submitted that in terms of COROTA rules 2020, a proper officer may during the course of customs clearance or thereafter, request for verification of certificate of origin from verification authority where the verification is being undertaken on random basis, as a measure of due diligence to verify whether the goods meet the origin criteria as claimed.

13. It is submitted that the said notification No.81/2020-Customs (NT) dated 21.03.2020 itself prescribes the time line for getting the certificate duly verified from the authority. In this connection a reference was made to Rule 6(3) of the notification No.81/2020-Customs (NT) dated 21.03.2020 which reads as under :-

> "*6 (3) When a verification request is made in terms of this rule, th following timeline for furnishing the response*

*shall be brought to the notice of the Verification Authority while sending the request :*

*(a)timeline as prescribed in the respective trade agreement; or*

*(b)in absence of such timeline in the agreement, sixty days from the request having been communicated."*

14. The learned counsel for the respondents further submits that in terms of Rule 6(6), where the information requested in the rule is received within the prescribed timeline, the proper officer has to conclude the verification within forty five days of receipt of the information, or within such extended period as the Principal Commissioner of Customs or the Commissioner of Customs may allow. It is further submitted that wherever a timeline to finalize verification is prescribed in the respective Rules of Origin is over, the proper officer has to finalize the verification within such timeline. It is submitted that time has not been expired, as the reference has been made only recently.

15. It is submitted that there is a large scale evasion of customs duty by importers of Arecanuts from the Republic of Sri Lanka by

wrongly availing the benefit of Notification No.26/2000-Customs dated 01.03.2000 by routing imports through the Republic of Sri Lanka.

16. I have considered the arguments advanced by the learned counsel for the petitioners and the learned standing counsel for the respondents.

17. The import of Arecanuts from the Republic of Sri Lanka is exempted from duty in terms of List-5 to Notification No.26/2000-Customs dated 01.03.2000, the notification contemplates the compliance with the provisions of Customs Tariff (Determination of Origin Under Free Trade Agreement Between the Democratic Socialist Republic of Sri Lanka and Republic of India) Rules 2000 vide notification No.19/2000-Customs (NT) dated 01.03.2000.

18.The said notification has be read along with Notification No.81/2020-Customs (NT) dated 21.08.2020. Notification No.81/2020-Customs (NT) dated 21.08.2020 is titled as Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020.

19. The petitioner has furnished required certificate namely the Certificate of Origin from the concerned department from the Republic of Sri Lanka viz., for the respective Bill of Entry in these writ petitions.

20. Notification No.81/2020-Customs (NT) dated 21.08.2020 gives power to the Assessing Officer viz., the Proper Officer under the Customs Act to verify the correctness of the Certificate of Origin.

21. Rule 6(1) of the aforesaid rules reads as under :-

> "*6.**Verification request** – (1)The proper officer may, during the course of customs or thereafter, request for verification of certificate of origin from Verification Authority where :*
>
> *(a)there is a doubt regarding genuineness or authenticity of the certificate of origin for reason such as mismatch of signatures or seal when compared with specimens of seals and signatures received from the exporting country in terms of the trade agreement;*
>
> *(b)there is reason to believe that the country of origin criterion stated in the certificate of origin has not*

*been met or the claim of preferential rate of duty made by importer is invalid : or*

*(c)verification is being undertaken on random basis, as a measure of due diligence to verify whether the goods meet the origin criteria as claimed.*

*Provided that a verification request in terms of clause (b) may be made only where the importer fails to provide the requisite information sought under rule 5 by the prescribed due date or the information provided by importer is found to be insufficient. Such a request shall seek specific information from the Verification Authority as may be necessary to determine the origin of goods."*

22. Sub Rule (3) prescribes the period within which the verification has to be completed. In this case, it is 60days from the request having been communicated to the concerned department from Socialist Republic of Sri Lanka.

23. The Proper Officer may on request of the importer provisionally assess and allow clearance of the imported goods subject to importer furnishing such security equal to the difference between the duty provisionally assessed under Section 18 of the Act and the preferential

duty claim.

24. Apart from asking the importer to furnish the deposit amount, the proper officer may also require that the importer to execute a bond under the above regulations together with surety or security, or both, as he may deem fit.

25. However, under the Customs (Provisional Duty Assessment) Regulations, 2011, an importer who seeks provisional assessment of Bill of Entry is required to deposit with the proper officer, such sum not exceeding 20% of the provisional duty, as the proper officer may direct and thereafter the assessing officer can provisionally determine the duty.

26. This Court has also dealt with the similar issue in WP.No.10913 of 2021 dated 17.06.2021 in the case of ***M/s.Aabis International Vs. The Commissioner of Customs, Chennai and another.*** At the time when the above order was passed by this Court on 17.06.2021, Instruction No.15/2023-Customs issued by the Central Board of Indirect Taxes and Customs, International Customs Division

was not true. The Court referred to the aforesaid regulations and concluded as follows :-

> *"19. The timeline for response by the Verification Authority is set out in regulation 6(3)(b), which is sixty days from date of request. In the present case, this request has not been initiated and the Department has been sitting pretty on the consignment despite requests for release, the petitioner repeatedly drawing attention to the fact that the consignment comprises perishable goods.*
>
> *20. That apart and very relevantly, 'Verification Authority' is defined under Regulation 2(g) to mean the authority in the export country designated to respond to a verification request under a trade agreement. The certificate of origin in this case as well as the clarification obtained by the petitioner have been obtained from the Assistant Director acting for the Director General of Commerce in the Department of Commerce, Colombo. The designated Authority under the IFSTA is the Director General of Commerce,*

*Department of Commerce, also the authority which has issued the COO and subsequent clarification. The objection of the respondents in regard to the COO as well as their contention that the clarification dated 19.03.2021 ought to have been received 'through proper channel' is thus, in my view, hypertechnical, to say the least.*

*21. In the light of the discussion as above, I am of the view that the petitioner has satisfied the requirement of production of a valid COO in this case. I would hasten to add that the Department is not foreclosed from making further enquiry in regard to any apprehensions that they may still continue to harbour concerning the COO.*

*22. As far as the present litigation is concerned, the petitioner has made a strong enough case to persuade me to quash the impugned order and issue mandamus for release of the goods forthwith, in any event within one week from the date of issuance of this order. I also draw support from the fact that the petitioner has been relying on the very same* *documentation as in the case of the consignment in question, including the COO, in other ports not just in India, but in Tamil Nadu itself that is, the Thoothukudi port, and consignments are being released without demur. The response of the revenue to this submission is that such actions will not 'bind' the Chennai authorities. This position is not appreciated as authorities under a Central enactment are expected to adopt consistent views in regard to similar/identical transactions, especially when they relate similar/identical fact and legal patterns. Diametrically opposite conclusions are not expected to be drawn on identical questions of fact and law by statutory authorities.*

*23. This writ petition is allowed in the above terms. Connected miscellaneous petitions are closed. No costs."*

27. When the above decision was rendered clarification of the Board vide instruction No.15/2023-Customs bearing reference I.No.CBIC-15021/48/2020-ICD-CBEC of the Central Boar of Indirect Taxes & Customs International Customs Division was not true.

28. By the above clarification, the Central Board of Indirect Taxes and Customs International Customs Division has clarified that when the specimen, seals and signatures circulated in advance, should be used to verify the genuineness/authenticity of e-CoO, the clarification also stated that integrity of such e-CoO can be further verified by using unique QR code printed on the certificate and in case of any doubt, the matter has to be referred to the FTA cell (under the Directorate of International Customs) for initiating the verification process with the issuing authority of the exporting goods. This procedure has been partly undertaken as per the statement of the learned counsel for the respondents.

29. However, it is noticed that the Tuticorin Port has allowed clearance a consignment of Arecanuts imported by the petitioners in WP.Nos.25607, 25610 and 25777 of 2023 vide Bill of Entry No.7440030 dated 20.08.2023. The e-CoO bear QR code (Quick Response Code). The QR code allows the Officer to confirm whether the

e-CoO is the Certificate of Origin is genuine or not.

30. It is further noticed that the respondents have referred to an alert issued by DRI in 2015. No fresh alerts have been issued based on which the verification process has been undertaken.

31. The Certificate of Origin appears to be genuine, unless the Certificate of Origin QR Code itself is not readable or found to be fake, clearance cannot be conditional.

32. Considering the above, the Court is inclined to dispose these writ petitions by directing the respondents to allow clearance of the imported consignment Arecanuts imported by these petitioners under the respective Bill of Entry subject to the petitioner furnishing bank guarantee representing 20% of the duty payable on the imported consignment, within 15days from the date of receipt of a copy of this order. The petitioner shall also furnish any other security other than the bank guarantee which the respondents may require to secure the interest of

revenue. The above exercise shall be carried out by the respondents within a period of 15days therefrom, from the date of deposit of 20% Bank Guarantee by the petitioners. The respondent shall also endevour to finalise the assessments under the respective Bills of Entries as expeditiously as possible preferably within six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

**07.09.2023**

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

To
1.The Commissioner of Customs (imports)
Custom House, No.60 Rajaji Salai,
Chennai – 600 001.

2.The Additional Commissioner of Customs,
Group – 1, Custom House, No.60 Rajaji Salai,
Chennai – 600 001.

3.The Deputy Commissioner of Customs,
Group -1, Custom House, No.60 Rajaji Salai,
Chennai – 600 001.

4.The Deputy Commissioner of Customs,
Group -1, Custom House,

Kolkatta.

**C. SARAVANAN,J.**
tsh

**W.P.Nos.25771, 25607, 25610 & 25777 of 2023**

**07.09.2023.**