IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.Nos.34569, 34575, 34576, 34579, 34582 & 34584 of 2022 & connected W.M.Ps.

W.P.No.34569 of 2022

M/s.Isha Exim,
P-586, Block N, New Alipore,
Kolkata - 700053, Represented by its,
Proprietor Shri Prabal Kumar Kundu ... Petitioner

vs.

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

2.The Assistant / Deputy Commissioner of Customs,
Group-1B, Custom House,
No.60, Rajaji Salai, Chennai - 600 001. ...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for writ of Mandamus directing the respondents, more particularly the second respondent to release the goods viz., "Unflavoured Supari Betelnut Product known as Supari" imported vide Bills of Entry No.2424171 dated

13.09.2022, forthwith on the basis of Advance Ruling No.AAR/44/Cus/02/2017 dated 31.03.2017 and issuance of a Detention Certificate for waiver of Demurrage / Container Detention Charges, in terms of Regulation 6(1)(I) of the Handling of Cargo in Customs Areas Regulation 2009 read with Regulation10(1)(I) of the Sea Cargo Manifest and Transshipment Regulation 2018.

For Petitioner : Mr.Vijaya Narayan,
Senior Counsel
Assisted by
Dr.S.Krishanand

For Respondents : Mr.V.Sundareswaran,
Senior Panel Counsel

COMMON ORDER

These writ petitions have been filed seeking for provisional release of the imported goods vide the following Bills of Entries:

Writ Petition	***Bills of Entry***	***Advance Ruling***	***Quantity (in Metric tonne)***
34569 of 2022	2424171 dated 13.09.2022	AAR/44/Cus/02/2017 dated 31.03.2017	189.000
34575 of 2022	2867208 dated 13.10.2022	AAR/44/Cus/02/2017 dated 31.03.2017	135.000
34576 of 2022	2867223 dated 13.10.2022	AAR/44/Cus/02/2017 dated 31.03.2017	135.000
34579 of 2022	2599722 dated 24.09.2022	AAR/44/Cus/02/2017 dated 31.03.2017	135.000

Writ Petition	*Bills of Entry*	*Advance Ruling*	*Quantity (in Metric tonne)*
34582 of 2022	2867225 dated 13.10.2022	AAR/44/Cus/02/2017 dated 31.03.2017	135.000
34584 of 2022	2424168 dated 13.09.2022	AAR/44/Cus/02/2017 dated 31.03.2017	135.000

2. Heard Mr.Vijay Narayan, learned Senior Counsel representing Dr.S.Krishnanandh, learned counsel for the petitioner in all the writ petitions and Mr.V.Sundareswaran, learned Senior Panel Counsel appearing for the respondents in all the writ petitions.

3. The petitioner has imported Supari from Thailand. According to the respondents, they are prohibited goods, whereas the petitioner categorically contends that they are not. According to the petitioner, as per the Advance Ruling dated 07.08.2015 in respect of M/s.Excellant Betelnut Products Pvt. Ltd., Nagpur, the subject goods namely Supari will fall under Chapter 21 of the Customs Tariff Act, 1975 and therefore, they are not prohibited goods. The relevant portion from the Advance Ruling dated 07.08.2015 in the case of M/s.Excellant Betelnut Products Pvt. Ltd., Nagpur which the petitioner relies upon is extracted hereunder:

"Chapter 21 provides Supplementary Notes, Note No.2 reads as under:

"In this Chapter "Betel Nut" product known as "SUPARI" means any preparation containing Betel-Nuts, but not containing any one or more of the following ingredients, namely; Lime, Katha (catechu), and tobacco whether or not containing any other ingredients, such as Cardamom, Copra or menthol". The case of the applicant is that the products should ordinarily be covered under Entry 21069030 which is, as under: "Betel Nut Product as Supari".

4. The petitioner categorically contends that the product Supari does not contain Lime, Katha (catechu) and Tobacco and also does not contain any other ingredients such as Cardamom, Copra or Menthol. Hence according to the petitioner, the product Supari will fall only under Chapter 21 of the Customs Tariff Act, 1975 and they are not prohibited goods for import. The petitioner also relies upon the Advance Ruling given to the petitioner dated 31.03.2017 and according to them, even in the said Advance Ruling, it has been made clear that the product Supari would only fall under Chapter 21 of the Customs Tariff Act, 1975. The relevant portion of the said Advance Ruling dated 31.03.2017 is extracted hereunder:

> *"Supplementary Note 2 to Chapter 21 (Miscellaneous edible preparations) defines Supari as under :*
>
> *In this chapter 'Betelnut product known as supari' means any preparation containing Betelnuts, but not containing any one or more of following ingredients, namely lime, katha (Catechu) and tobacco whether or not containing any other ingredients such as cardamom, copra or menthol."*

5. During the pendency of these writ petitions, by order dated 16.11.2022, this Court directed (a) Doctors' Analytical Laboratories Pvt., Ltd., R.809, TTC Rabale MIDC, Thane-Belapur Road, Navi Mumbai - 400 701 and (b) Arecanut Research and Development Foundation (R), Varanasi Towers, Mission Street, Mangalore -575 001, Karnataka, to test the samples of the petitioner's products and submit their respective reports thereafter. In the said order, the learned Single Judge of this Court has also observed in paragraph 6 as follows:

> *"6. What is prohibited in terms of Chapter-8 are whole/split/ground, areca nuts. Chapter 21 on the other hand, refers to 'supari' and the order of the AAR refers to all four types of the supari having been subject to various processes, culminating in bite sized pieces, either with, or*

without permitted additives, fit for human consumption. This is on the other hand. Thus, the description under the Explanation to Chapter 21, must be seen in alignment with the use of the word preparation, and to mean that even betelnuts, processed and prepared for human consumption, though unflavoured, will constitute 'supari'. This aspect of the matter must be taken note of by the assessing authority in the ensuing proceedings."

6. Pursuant to the interim direction given by this Court on 16.11.2022 referred to supra, the aforesaid two laboratories have submitted their respective reports. According to the petitioner, both the reports are in their favour as it has been made clear in those reports that the product Supari imported by the petitioner does not contain any other product, but they are only small cut pieces of Areca Nuts/Betal Nuts commonly known as Supari.

7. However, learned Standing Counsel appearing for the respondents would submit that the Supari imported by the petitioner will fall only under Chapter 8 of the Customs Tariff Act, 1975 and therefore, they are prohibited goods. According to him, the goods were rightly detained by the Customs Authorities as they are prohibited goods. He would also submit that till date,

no proper reply has been sent by the petitioner to the Show Cause Notice issued by the Customs Authorities.

8. Learned Standing Counsel appearing for the respondents in support of his contention, has relied upon the decision of the Cestat, South Zonal Bench, Chennai, in the case of S.T.Enterprises vs. Commissioner of Customs (Chennai VII) reported in 2021 (378) E.L.T. 514 (Tri. - Chennai). According to him, the Hon'ble Supreme Court has also confirmed the aforesaid decision by its order dated 19.03.2021.

9. Section 110-A of the Customs Act, 1962 reads as follows:

> *"110A. Provisional release of goods, documents and things seized pending adjudication.—Any goods, documents or things seized under section 110, may, pending the order of the adjudicating officer, be released to the owner on taking a bond from him in the proper form with such security and conditions as the Commissioner of Customs may require."*

10. As seen from section 110-A of the Customs Act, 1962, an independent decision will have to be taken by the Customs Authorities with

regard to the request made by any importer seeking for provisional release of the detained goods which has been detained under section 110-A of the Customs Act, 1962 as in the present case. Whether the petitioner has responded to the Show Cause Notice issued by the Customs Authorities or not is immaterial for the purpose of deciding the application seeking for provisional release of the detained goods under section 110-A of the Customs Act, 1962. As seen from Section 110-A of the Customs Act, 1962, pending the order of the Adjudicating Authority, the goods may be provisionally released to the owner or the bank holder on taking a bond from him in a proper form with such security and conditions as the Adjudicating Authority may require.

11. Therefore, no prejudice would be caused to the respondents, if the petitioner is allowed to submit an application under section 110-A of the Customs Act, 1962 seeking for provisional release of the detained goods and a direction is issued to the respondents to consider the said application on merits and in accordance with law, in the light of the contentions raised by the petitioner in these writ petitions within a time frame to be fixed by this Court.

12. This Court is not expressing any opinion on the merits of the petitioner's application to be filed under section 110-A of the Customs Act as it is for the respondents to consider the same on merits and in accordance with law.

13. For the foregoing reasons, this Court directs the petitioner to submit an application to the second respondent under section 110-A of the Customs Act, 1962, within a period of one week from the date of receipt of a copy of this Order, seeking for provisional release of the goods in respect of the following Bills of Entries:

Writ Petition	***Bills of Entry***	***Advance Ruling***	***Quantity (in Metric tonne)***
34569 of 2022	2424171 dated 13.09.2022	AAR/44/Cus/02/2017 dated 31.03.2017	189.000
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Writ Petition	*Bills of Entry*	*Advance Ruling*	*Quantity (in Metric tonne)*
34584 of 2022	2424168 dated 13.09.2022	AAR/44/Cus/02/2017 dated 31.03.2017	135.000

14. On receipt of the said application, the second respondent shall pass final orders on merits and in accordance with law, within a period of three weeks thereafter, after granting one personal hearing to the authorised representative of the petitioner and after giving due consideration to the following viz.,

(a) Advance Ruling dated 07.08.2015 in respect of M/s.Excellant Betelnut Products Pvt. Ltd., Nagpur;

(b) Advance Ruling dated 31.03.2017 in respect of the petitioner herein;

(c) An interim order dated 16.11.2022 passed in W.P.No.30426 of 2022;

(d) Report of the Doctors' Analytical Laboratories Pvt., Ltd., Navi Mumbai dated 20.12.2022; and

(e) Arecanut Research and Development Foundation (R), Mangalore, Karnataka dated 06.12.2022.

15. With the aforesaid directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

01.02.2023

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Note: Issue order copy on **02.02.2023.**

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

To

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

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

ABDUL QUDDHOSE, J.
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W.P.Nos.34569 of 2022 etc., batch

01.02.2023