IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **20.11.2023**

CORAM:

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

WP No.32796 of 2023 and
WMP Nos.32420 & 32422 of 2023

M/s.N.C.Alexander
T/H-24, Anna Fruit Market,
Koyambedu, Chennai – 600 092
Represented by its Proprietor
N.C.Alexander ... Petitioner

vs.

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

2.Additional Commissioner of Customs (Group 1)
Office of the Commissioner of Customs,
Chennai II (Imports),
No.60, Rajaji Salai,
Chennai – 600 001.

2.Assistant/Deputy Commissioner of Customs (Group I)
Office of the Commissioner of Customs,
Chenna II (Imports)
No.60, Rajaji Salai,
Chennai – 600 001. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents, more particularly the 3rd respondent to assess and cause release the goods imported vide Bill of Entry Nos.8532704 dated 30.10.2023, Bill of Entry No.8511619 dated 28.10.2023, Bill of Entry No.8671328 dated 06.11.2023, Bill of Entry No.7825331 dated 14.09.2023 pertaining to import of apples of various grades and counts from Turkey vide the above referred 4 Bills of Entry covered under 4 Commercial invoices, pending clearance, contrary to the citizen's charter adopted by the office of the respondents and contrary to the law laid down by this Court and modified by the Division Bench of this Court and direct the office of the 1st respondent to issue a "detention certificate" for waiver of demurrage and container detention charges in terms of Regulation 6 (1) of Handling of Cargo in Customs Areas Regulations, 2009.

For Petitioner	:	Mr.B.Satish Sundar
For Respondent	:	Mr.A.P.Srinivas Senior Standing Counsel

ORDER

This writ petition has been filed for issuance of a writ of mandamus, to direct the respondents, particularly the 3rd respondent to assess and cause release of goods imported covered under Bills of Entry Nos.8532704 dt.30.10.2023, 8511619 dt.28.10.2023, 86713278 dt.06.11.2023 and 7825331 dt.14.09.2023 pertaining to import of apples of various grades and counts from Turkey vide the above referred 4 Bills of Entry covered under 4 Commercial invoices, pending clearance, which were detained contrary to the citizen's charter adopted by the office of the respondents and contrary to the law laid down by this Court and modified by the Division Bench of this Court and also direct the office of the 1st respondent to issue a “detention certificate” for waiver of demurrage and container detention charges in terms of Regulation 6 (1) of Handling of Cargo in Customs Areas Regulations, 2009.

2. The case of the petitioner is that they have imported apples from Turkey and for the said product, they have filed the Bills of Entry for the purpose of clearing the same from Madras Port Trust. However, so far without taking any decision, the Bills of Entry were kept pending by the respondents and not releasing the goods.

3. Heard the learned counsel appearing for the petitioner as well as the learned Senior Standing Counsel appearing for the respondents and perused the materials available on record.

4. In terms of the notification No.5 of 2023 dated 08.05.2023 issued by the respondent Department, no importer can import the goods at CIF value less than or equal to Rs.50 per kg. However, in the present case the petitioner has imported apples at the rate ranging from Rs.32 to

35. Therefore, according to the respondent Department, it is not in accordance with law and since the CIF value mentioned in the Bills of Entry is not in terms of the notification No.5 of 2023, the Bills of Entry are kept pending, without ordering clearance from the Port.

5. Since the above said notification has been challenged before various High Courts including this Court vide W.P.No.24343 of 2023, wherein this Court has granted interim stay of the notification No.5 of 2023 dated 08.05.2023 and directed the respondent to assess and release the imported goods. Against the said order, the 2nd respondent has preferred an appeal in W.A.No.2626 of 2023 dated 18.10.2023 wherein the Division Bench of this Court has directed to release the goods subject to execution of Bank Guarantee for the differential rate of duty, i.e. the price determined by virtue of notification i.e. Rs.50 per kg. minus the price shown in the Bills of Entry (Rs.50 – Rs.32 to Rs.35). The relevant portion of the judgment of the Division Bench of this Court is extracted hereunder -

> *13. At this juncture, the learned standing counsel appearing for the appellant submitted a memo of calculation with respect to differential duty payable by the respondent, which reads as follows:*

(A) Bill of Entry No.6592170 dated 26.06.2023

Duty on fresh apples is 50% of the tariff value

(i) 4917.5 kg x Rs.47.99	*= Rs. 2,35,990.8*
(ii)962.5 kg x Rs.43.17	*= Rs. 4,155.1*
(iii)980 kg x Rs.57.59	*= Rs. 56,438.2*
(iv)21367.5 kg x Rs.47.99	*= Rs.10,25,426.3*
(v)12932.5 kg x Rs.43.20	*= Rs. 5,58,684.0*
	= Rs.19,18,090.4
Value as per Bill of Entry is	*Rs.19,18,090.40*
50% duty on Rs.19,18,090.40	***= Rs. 9,59,045.20***

(B) Value of goods if minimum import price is Rs.50/-

47460.5 kg x Rs.50/- = Rs.23,73,025.00

Duty payable at 50% on Rs.23,73,025.00 = Rs.11,86,512.50

(C) Total differential duty payable is (B) - (A) (i.e.) Rs.2,27,467.30

14. In the light of the above, the appellant is directed to release the subject goods on furnishing of bank guarantee to the tune of Rs.2,25,000/- towards differential duty, by the respondent. It is made clear that this interim arrangement would be made only to safeguard the interest of both parties; and the bank guarantee to be furnished by the respondent is kept alive, till the decision is arrived at with regard to validity of the notification no.5/2023 dated 08.05.2023

6. At this juncture, the learned Senior Standing Counsel appearing for the respondents submitted that in the event if the Bank Guarantee is executed for the differential duty amount, as directed by the Division

Bench of this Court, the issue of release of the subject goods would be considered by the respondent department.

7. In view of the submissions made by the learned counsel for the petitioner as well as the learned Senior Standing Counsel appearing for the respondents and the judgment passed by the Division Bench of this Court, this Court directs the respondents to release the goods within a week's time, upon execution of Bank Guarantee by the petitioner for the differential duty, on the same line as held by the Hon'ble Division Bench of this Court. However, this is subject to the outcome of the Writ Appeal No.2626 of 2023.

8. In the event, if the notification No.5 of 2023 dated 08.05.2023 is upheld by the Hon'ble Division Bench, certainly the respondents are entitled to encash the Bank guarantee executed by the petitioner. The respondents shall also consider waiver of the charges, in the event of request, if any, being made by the petitioner, in accordance with law.

9. With the above observation, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

20.11.2023

Index: Yes/No
Speaking/Non-Speaking Order
Neutral Citation: Yes/No.
rgr

Note: Issue order copy by 21.11.2023

To

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

2.The Additional Commissioner of Customs (Group 1)
Office of the Commissioner of Customs,
Chennai II (Imports),
No.60, Rajaji Salai,
Chennai – 600 001.

2.The Assistant/Deputy Commissioner of Customs (Group I)
Office of the Commissioner of Customs,
Chenna II (Imports)
No.60, Rajaji Salai,
Chennai – 600 001.

KRISHNAN RAMASAMY, J.

rgr

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