IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.798 OF 2024

Taj Pawan Exports Co. … Petitioner

Versus

The Commissioner of Customs (Import) …Respondents
Group-I, Jawaharlal Nehru Customs House & Ors.

ASHVINI BAPPASAHEB KAKDE
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Date: 2024.01.22 10:52:19 +0530

Mr. Anand S. Patil for the Petitioner.
Mr.Jitendra B. Mishra a/w. Mr. Dhananjay B. Deshmukh for the Respondents.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 19 January, 2024

P.C.:

1. Not on board, taken on production board.

2. We have heard Mr. Patil, learned counsel for the petitioner and Mr. Mishra, learned counsel for the respondents.

3. This petition under Article 226 of the Constitution of India is filed praying for the following reliefs :

> *a) Be issue Rule,*
>
> *b) This Hon'ble Court may be pleased to call for the relevant record on the file of Respondent No. 1 & 3 & may further be pleased to issue a Writ of Mandamus or any other appropriate writ or order or directions, directing the Respondents & more particularly to the Respondent No.1 & 3 to grant Release of the goods covered by Exh-A, Bill of Entry No. 9381257 dated 23/12/2023 for the home consumption on such terms and conditions as this Hon'ble*

Court may deem fit & proper.

c)This Hon'ble Court may direct the Respondents to Release the goods covered by Exh-A, 9381257 dated 23/12/2023 on bond only.

d) Pending the hearing & final disposal of the present Writ Petition, this Hon'ble Court may direct the Respondent No. 1 & 3 to Provisional Release of the goods covered by Exh-A, Bill of Entry No. 9381257 dated 23/12/2023 on bond only

e) Interim, Ad-interim relief may be granted as per prayer clause (d);

f) Cost of this Petition be provided for;

g) Pass such further Order and other relief as the nature and circumstances of the case may require.

4. Mr. Patil, learned counsel for the petitioner, would submit that the consignment of apples, which is the subject matter of the present petition, is not being cleared by the respondent customs on the ground that the same is hit by the Notification No.5/2023. It is contended that such notification is sought to be foisted by the department on the Petitioner when the same is neither attracted nor applicable. He submits that in regard to similar imports, the proceedings were considered by this Court initially in the case of **M/s. Indusina Exmi LLP vs Union of India & Anr.**[1], and subsequently in the case of **Jumbo Dates vs. The Commissioner of Customs (Import)**[2], wherein in this Court, considering the orders passed by the Kerala High Court in the case of **Indusina Exmi LLP vs. The Commissioner of Customs (Imports) & Ors.**[3] as also the orders passed by the Division Bench of Madras High Court in the case of the

1 WP/22281/2023 dtd. 11.07.2023.
2 WP/16014/2023 dtd. 21.12.2023.
3 WP/15414/2023 dtd. 8.12.2023.

Additional Commissioner of Customs vs M/s. N. C. Alexander[4] was pleased to order provisional release of the imports of apples being not affected by Notification No.5 of 2023.

5. As rightly pointed by Mr. Patil, we have considered a similar challenge in **Jumbo Dates (supra)**. We note our order dated 21st December 2023 which reads thus:

> *"1. We have heard Mr. Patil, learned counsel for the petitioner and Mr. Mishra, learned counsel for the respondents.*
>
> *2. The present proceedings concern the import of apples under the subject Bill of Entry. The prayers as made in the present petition is in regard to the provisional release of the consignment of apples imported by the petitioner, which have been detained and not released by the respondents, on the ground that Notification No. 5/2023 has been issued, which caps the minimum price of apples for import at Rs.50/- per kg.*
>
> *3. The contention as urged by the petitioner is that the import in question and subject matter of the present proceedings is exactly at Rs. 50/- per kg. and hence the said notification, which is sought to be foisted on the petitioner, is not applicable.*
>
> *4. Learned counsel for the petitioner would also submit that similar issue had arisen before the Kerala High Court in* ***M/s. Indusina Exim LLP vs. Union of India & Anr.***[5]*, who had also imported apples and had challenged the said notification. The Kerala High Court by an order dated 11 July, 2023 had stayed the said notification and, accordingly, permitted provisional release of apples as imported by M/s. Indusina Exim LLP (supra).*
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> *5. Learned counsel for the petitioner would thus submit that apart from the petitioner being not affected by the said notification, the petition would also stand covered by such order passed by the Kerala High Court in M/s. Indusina Exim LLP (supra) and hence, it would be an entitlement of the petitioner to seek provisional release of apples.*
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> *6. Learned counsel for the petitioner has also drawn our attention to an order dated 8 December, 2023 passed by this Court in the case of M/s.*

4 W.A. No.2626 of 2023 dtd. 18.10.2023

5 Writ Petition No. 22281 of 2023 dated 11 July, 2023

Indusina Exim LLP vs. The Commissioner of Customs (Imports) & Ors.[6] *in which this Court, considering the order passed by Kerala High Court, had permitted provisional release of the goods in the following terms:*

> *"5. We have heard learned counsel for the petitioner and the respondents.*
>
> *6. In our view, the petitioner is entitled to provisional release of goods as prayed for, for more than one reason. Notification No. 5/2023 which imposes minimum price of Rs.50/- per kg. for import of apples has been stayed by the Kerala High Court. Secondly, only issue is with respect of valuation and goods being perishable in nature and further the petitioner is willing to comply with the terms and conditions to be put forth by respondent no. 2 for provisional assessment of goods there does not seem to be justifiable release to detain the goods. In the light of these facts, it would be in the interest of justice that the petition be allowed in terms of prayer clause (1).*
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> *7. We, therefore, direct Respondent to provisionally assess the Bill of Entry No. 8733339 within a period of four days from today and release the goods on the petitioner furnishing the bond."*

7. We may also observe that the revenue had filed a Review Petition No. 107 of 2023 praying for review of the aforesaid order dated 8 December, 2023, which came to be rejected by a detailed order dated 14 December, 2023 passed by this Court.

8. Mr. Mishra, learned counsel for the respondent has opposed this petition on the ground that the petitioner has waived a show cause notice and in fact an order is recently passed whereby the goods have been confiscated. It is stated to be dated 18 December, 2023. However, the petitioner has not been served with a copy of the order. It is stated that an email was forwarded to the petitioner enclosing such order as also by a speed post. However, such order is not placed before us. Such order, in our opinion, however, would not make any difference considering the view we are required to take on the proceedings.

9. Be so it, in our opinion, there is much substance in the contentions as urged on behalf of the petitioner. We have seen from the documents as annexed in the petition, which are Bill of Entry and Invoices, that the price at which the petitioner has imported the apples in qestion is at Rs.50/- and the embargo to any clearance of such import under Notification No. 5/2023, which would operate if the value is below Rs.50/- per kg. Thus, it would not be correct on the part of the revenue

6 Writ Petition No. 15414 of 2023

only on the ground of the notification in regard to fixing of the import price, the present consignment of the apples, as imported by the petitioner should be labelled as prohibited goods.

10. We may also observe that not only this Court in the case of M/s. Indusina Exim LLP vs. The Commissioner of Customs (Import) but also the Kerala High Court as well as the Madras High Court have taken a consistent view in regard to permitting clearance of the apples on the ground that Notification No. 5/2023 has been stayed. We have not been pointed out any judgment which takes a contrary view in regard to the notification in question. We have also not been pointed out that the stay of the said Notification as ordered by the Kerala High Court has stood vacated. The order passed by the Kerala High Court on the said notification, would apply in respect of imports of apples by traders throughout the country considering the settled principles of law as laid down by the Supreme Court in ***M/s. Kusum Ingots and Alloys Ltd. vs. Union of India & Anr.***[7]*.*

11. In the aforesaid circumstances, considering that the imports are perishable in nature, we are inclined to allow this petition in terms of the following order:

__O R D E R__

(i) We direct that the imports of the petitioner subject matter of Bill of Entry No. 8854586 dated 20 November, 2023, be released on the petitioner furnishing a bond.

(ii) An appropriate assessment of the bill of entry be accordingly undertaken in accordance with law within a period of three days from today.

12. Disposed of in the above terms. No costs."

6. This Court in another case, namely, ***K. B. International Vs. The Commissioner of Customs (Import) Group- I & Ors.*** (Writ Petition No. 229 of 2024), decided on 5th January 2024, had taken a similar view as in the case of ***Jumbo Dates (supra)***.

7. In the present case, the Bills of Entry seek to clear the imports of apples which are imported by the petitioner at a price which is at Rs.50/-

7 (2004) 6 SCC 254

per kg. Thus clearly the price per kilogram being Rs.50/-, which is not below the price fixed by Notification No.5 of 2023, it would be correct for the petitioner to contend that the respondents cannot detain the petitioner's consignment on the basis of the minimum price as fixed by the said notification. We are accordingly of the opinion that there is no reason as to why the petitioner ought not to be permitted to clear the goods. We accordingly dispose of this petition by following order :

(i) We direct that the imports of the petitioner, which are the subject matter of Bill of Entry No. 9381257 dated 23/12/2023, be not detained on the ground that these goods are prohibited goods under Notification No.5/2023, and, on such count, be released on the petitioner furnishing a bond.

(ii) An appropriate assessment of the bill of entry be accordingly undertaken, in accordance with law, within a period of 3 days from today.

(iii) It is clarified that, except for what has been observed above, we have not examined any other issue.

8. Disposed of in the above terms. No costs.

(FIRDOSH P. POONIWALLA, J.) **(G. S. KULKARNI, J.)**