THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **12.02.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.110 of 2024
&
WMP No.120 of 2024

M/s.Vishwa Enterprise,
Rep. by its Proprietor Mr.Mohit Gulshan Bhasin,
G-60, Agawal Modern Bazar,
C-33, Lawrence Road,
Delhi-110 035. ... Petitioner

vs

1. The Commissioner of Customs (Imports)
Customs 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. ... Respondents

PRAYER : This Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Mandamus directing the Respondents herein to release the goods viz., 540 Bags viz., 27,000 kgs. of Areca Nuts of Srilankan Origin imported vide Bill of Entry

No.6674847, dated 01.07.2023, by extending the Benefit of NIL Rate of Customs Duty as per Notification No.26/2000-Cus., dated 01.03.2000, by accepting the Electronic Country of Origin (e-Co-O) No.CO/ISFTA/2023/20177, dated 22.06.2023, issued by the Government of Sri Lanka under ISFTA, been confirmed by Department of Commerce, Sri Lanka and forwarded by the High Commission of India, Colombo to FTA Cell-1, DIC, CBIC.

For Petitioner : Mr.A.K.Jayaraj

For Respondents: Mr.V.Sundareswaran
Senior Standing Counsel

ORDER

The petitioner seeks release of 540 bags of areca nuts of Sri Lankan origin imported under bill of entry No.6674847 dated 01.07.2023 by extending the benefit of customs duty exemption under the applicable notification.

2. The petitioner asserts that the above mentioned 540 bags of areca nuts were imported from Sri Lanka under purchase from D.L.K. Spice Export, Sri Lanka. As per the Indo-Sri Lanka Free Trade Agreement (ISFTA), it is stated that areca nuts may be imported without payment of duty subject to satisfying the requirements of the Customs [Administration of Goods of Origin under Trade

Agreements] Rules, 2020 (the CAROTA Rules). Since the goods were not released in spite of submitting a certificate of origin and providing a verification with regard to the authenticity of such certificate of origin, the present writ petition was filed.

3. Learned counsel for the petitioner submits that the goods were imported from an exporter called D.L.K. Spice Export, Sri Lanka. In respect of such goods, he submits that the certificate of origin was issued on 22.06.2023. Upon request for verification, he submits that the Department of Commerce, Sri Lanka, issued a verification certificate on 31.10.2023. According to learned counsel, such certificate was issued after a chain of correspondence involving the High Commission of India in Sri Lanka.

4. In the above facts and circumstances, learned counsel submits that the petitioner is entitled to release of goods without providing a bank guarantee. At the highest, he submits that the petitioner may be called upon to provide an indemnity bond.

5. These contentions are countered by Mr.Sundareswaran,

learned senior standing counsel. By placing on record a communication dated 14.09.2023 from D.L.K. Spice Export, he submits that the exporter from whom the petitioner allegedly procured areca nuts pointed out that many importers from India have fraudulently imported products by falsely claiming that such products were exported by D.L.K. Spice Export. He further submits that the certificate of origin was signed by an authorized signatory and not by the proprietor of D.L.K. Spice Export. With reference to sub-rule (2) of Rule 6 of the CAROTA Rules, he contends that the proper officer is entitled to request for additional information. Based on the letter received from D.L.K Spice Export, he states that additional information was called for. On this basis, he resists the request for release of goods.

6. Under the CAROTA Rules, the expression "verification" is defined in Rule 2(f) as under:

"2(f) "Verification" means verifying genuineness of a certificate of origin or correctness of the information

contained therein in the manner prescribed by the respective Rules of Origin; ".

7. The expression "verification authority" is also defined in Rule 2(g), which is as under:

> *"2(g) "Verification Authority" means the authority in exporting country or country of origin, designated to respond to verification request under a trade agreement. "*

8. The record reflects that a certificate of origin was issued on 22.06.2023 by the Commercial Research Officer, Colombo. This certificate was issued under the ISFTA. In terms of Rule 6 of the CAROTA Rules, the proper officer requested that the authenticity of the certificate and the correctness of information provided therein be verified by the verification authority. Pursuant to such request, the certificate of origin dated 31.10.2023 was issued by the Assistant Director of Commerce by the Acting Director General of Commerce, Department of Commerce, Government of Sri Lanka. These documents indicate conclusively that, upon verification of the

certificate of origin, it was certified that such certificate was digitally signed by the authorized officer of the Department for signing certificates of origin under the ISFTA.

9. In spite of such verification, the respondents contend that further information is required in light of the communication dated 14.09.2023 from D.L.K. Spice Export. The communication from D.L.K. Spice Export specifies the names of certain importers, but the name of the petitioner is not mentioned therein although the bill of entry is prior to the communication. The request for further information has not been placed on record. No doubt, under sub-rule 2 of Rule 6, it is permissible for the proper officer to request for additional information pursuant to verification.

10. By taking into account the following: a certificate of origin was issued by the relevant Sri Lankan authority; such certificate was subsequently verified by the Department of Commerce, Government of Sri Lanka; the communication from D.L.K. Spice Export does not mention the petitioner; and the request for additional information is

not on record, this is an appropriate case to direct the provisional release of goods, albeit subject to limited safeguards to protect revenue interest under the facts and circumstances.

11. Accordingly, this writ petition is disposed of with the following directions:

(i) the petitioner is directed to provide an indemnity bond for 100% of the duty payable in case it is concluded in the assessment proceedings that the petitioner is not entitled to exemption from Customs duty.

(ii) The petitioner is further directed to provide a bank guarantee for 10% of the customs duty from a nationalized bank, which shall be for an initial term of one year subject to renewal until conclusion of assessment.

(iii) Both the indemnity bond and bank guarantee shall be submitted within one week from the date of receipt of a copy of this order.

(iv) Subject to the fulfilment of the two conditions specified above, respondents 1 and 2 are directed to provisionally release the goods within one week from the date of fulfilment of the above conditions. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

12.02.2024

Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

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SENTHILKUMAR RAMAMOORTHY J.

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