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W.P.No.12427 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.12427 of 2021

and

W.M.P.Nos.13218 & 13627 of 2021

M/s.Shree Vijaya Meenakshi Timber Traders,
Represented by its Partner,
Mr.B.Satyanarayana Murthy,
Having its place of business at
New No.311, Appa Rao Gardens,
1st Floor, Choolai,
Chennai – 600 112.

... Petitioner

Vs.

1.The Union of India,
Rep. by its Union Secretary,
Ministry of Agriculture,
Cooperative and Farmers Welfare,
Department of Agriculture,
Cooperation & Farmers Welfare,
Krishi Bhawan, New Delhi.

2.The Plant Protection Officer,
Plant Quarantine Station,
G.S.T. Road, Near Trident Hotel,
Meenambakkam,
Chennai – 600 027.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating



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to condition No.3 of Official Memorandum dated 19.6.2020 in No.8-325/2019-PP II issued by the first respondent and quash the same as illegal and void.

For Petitioner : M/s.M.Chithira Gomathy

For Respondents : Mr.C.Kulanthaivel
Senior Panel Counsel

ORDER

This Writ Petition has been filed seeking for a Writ of Certiorari, to call for the records relating to condition No.3 of Official Memorandum dated 19.6.2020 in No.8-325/2019-PP II issued by the first respondent and quash the same as illegal and void.

2. The case of the petitioner is that, it is a company engaged in import of timbers and other goods from various countries across the world through Chennai Port Trust and other Ports of India. The Plant Quarantine (Regulation of Import into India) Order 2003 (in short 'P Q Order, 2003'), framed under Sub Section (1) of Section 3 of the Destructive Insects and Pests Act, 1914 (2 of 1974), regulates the import of various agricultural articles including wooden logs into India. Para 9 in Chapter VI of the said regulation provides that a timber is to be



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imported into India only when the timber has been appropriately fumigated/treated and is accompanied by a phytosanitary certificate issued at the country of export. However, para 9(ii) provides that if, on inspection, it is found that the wood has not been fumigated, it shall be fumigated/treated at the port/container freight station or Inland container depot under the jurisdiction of the Plant Quarantine Officer. The Plant Quarantine Order of 2003, Chapter VI, para 14(2) of the order, empowers the first respondent to grant relaxation of any of the conditions stipulated by the order. However, taking into difficulties faced by the wooden industries in India and having regard to the fact that “Methyl Bromide” fumigation is prohibited in the European Union, Latin America and Western Africa and it is impossible to have off shore fumigation using Methyl Bromide on the agricultural products covered by the said P Q Order of 2003, the first respondent in exercise of its powers under para 14(2) in Chapter VI of the P Q order, 2003, granted relaxation of fumigation regulation. By the said relaxation accorded, the Government had relaxed the requirement under Order 9 of P Q Order, 2003, for off shore fumigation and had permitted import of wooden logs and other products warranting “methyl bromide” fumigation. The said relaxation has been relaxed by the first respondent periodically vide its office



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memorandum dated 28.06.2017 and relaxing the requirement of off shore fumigation of timber and permitting the fumigation of timber using “Methyl Bromide” at the port of discharge. However, the said relaxation has been granted subject to five conditions, one of them being the impugned condition that the consignment will be charged with penalty/inspection fee. Challenging the same, the present writ petition is filed.

3. Learned counsel appearing for the petitioner submitted that, the issue involved in this Writ Petition is no longer *res integra* and the same has already been dealt with by the Delhi High Court and an order has been passed in W.P.(C).No.14973 of 2021 on 09.02.2023 in the case of ***Bansal Lumbers Private Limited Vs. Union of India & Ors.*** Further, he submitted that the said decision of the Delhi High Court has been followed by this court in W.P.No.2213 of 2020 and hence, he prays that the same order may be passed in this writ petition also.

4. Learned Senior Panel Counsel appearing for the respondents did not dispute the facts submitted by the learned counsel appearing for the petitioner.



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5. This Court in W.P.No.2213 of 2020 in the case of ***M/s.Sathyam Impex Vs. The Union of India & Anr.*** in paragraph Nos.3 to 6 has held as follows :-

*“3. The learned counsel for the petitioner submitted that, the issue involved in this Writ Petition has already been dealt with by the Delhi High Court and an order has been passed in W.P.(C).No.14973 of 2021 on 09.02.2023 in the case of **Bansal Lumbers Private Limited Vs. Union of India & Ors.** Hence, he prays that the same order may be passed in the above writ petition also.*

4. Heard the learned counsel for the petitioner and the learned Central Government Standing Counsel and perused the material documents available on record.

*5. The Delhi High Court, passed an order dated 09.02.2023, in the case of **Bansal Lumbers Private Limited Vs. Union of India & Ors.,** in W.P.(C).No.14973 of 2021, wherein, it has been held as follows :*

*“2. Judgment dated 28.06.2022 delivered in the case of **M/s ND Timbers Vs. Union of India,** SCA No.16280/2021, by Gujarat High Court has been brought to the notice of this Court, wherein the Gujarat High Court has quashed and set aside the provisions of Regulation 14(2) of the Plant Quarantine (Regulation of Import into*



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India) Order, 2003 (hereinafter to be referred to as “PQ Order 2003”), which is also the subject matter of the present Writ Petition. It has also been brought to the notice of this Court that pursuant to the judgment delivered by the Gujarat High Court, the Government of India has issued an Office Memorandum dated 08.08.2022, implementing the judgment passed by the Gujarat High Court, directing all the Plant Quarantine (PQ) Stations not to realise five time penal fee in case of import of Timber/ Wood from Methyl Bromide phase out countries without fumigation with Methyl Bromide.

3. *It has also been stated that a Gazette Notification has also been issued on 13.10.2022 vide which the PQ Order 2003 has been amended and the same is reproduced as under:*

**“MINISTRY OF AGRICULTURE AND
FARMERS WELFARE
(Department of Agriculture and Farmers
Welfare)**

NOTIFICATION

S. O. 4871 (E). – *In exercise of the powers conferred by subsection (1) of section 3 of the Destructive Insects and Pests Act, 1914 (2 of 1914), the Central Government hereby make the following Order further to amend the Plant Quarantine (Regulation of Import into India) Order, 2003, namely:-*

1. Short title and Commencement – (1)
This Order may be called the Plant Quarantine (Regulation of Import into India) (Fifth Amendment) Order, 2022.

**2. In Chapter II of Plant Quarantine
(Regulation of Import into India)**



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Order, 2003, after the existing entries relating to Clause 5 the following entries, will be added namely:- (ii) In case of consignments requiring pre-shipment fumigation with MBr originating from countries which have phased out the use of MBr for quarantine and pre-shipment purposes, the consignment shall be released after charging the normal inspection fee. The NPPO of the country will be required to submit relevant documents to NPPO India to establish phased out country status. NPPO India would notify the list, which would be updated regularly based on the information received.

[F. NO. 8-34/2021-PP.II]

PRAMOD KUMAR MEHERDA, Jt. Secy."

4. In light of the aforesaid notification, no further orders are required to be passed by this Court as the relief prayed by the Petitioner has already been granted by the Respondents.

5. The Writ Petition stands disposed of, accordingly.

6. In view of the issue having been settled already and the present case falls squarely within the four corners of the said decision, this Court is inclined to dispose of this Writ Petition in the same line by following the above order."



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M.DHANDAPANI, J.

sp

6. Accordingly, this Writ Petition is disposed of. No costs.

Consequently, the connected miscellaneous petitions are closed.

10.09.2024

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

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To

1.The Union Secretary,
Ministry of Agriculture,
Cooperative and Farmers Welfare,
Department of Agriculture,
Cooperation & Farmers Welfare,
Krishi Bhawan, New Delhi.

2.The Plant Protection Officer,
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