IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.06.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.13353 of 2024 and
W.M.P.No.14502 of 2024

M/s. Mango Tree Traders,
Represented by its partner Shri.M.Chandra Bose,
AL-63B, 4th street, 12th main road,
Anna Nagar, Chennai - 600 040. .. Petitioner

-vs-

1. The Commissioner of Customs(Audit),
Office of the Principal Commissioner of Customs(Audit),
Custom House, No.60,
Rajaji Salai, Chennai - 600 001.

2. The Commissioner of Customs,
Chennai-II (Imports),
Custom House, No.60,
Rajaji Salai, Chennai - 600 001.

3. The Assistant Commissioner of Customs,
DC/AC-VI-O/o COMMR-CUS-ADT-CHENNAI,
Office of the Commissioner of Customs(Audit),
Custom House, No. 60, Rajaji salai,
Chennai -600 001. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the Impugned Order-in-Original (OIO) No.104650/2024, dated 23.01.2024 in F.No. GEN/ADJ/COMM/181/2023-ADJN-O/O COMMR-CUS-IMP-CHENNAI, DIN 20240173ON0000000A-96, on the file of the 1st Respondent and quash the same.

For Petitioner : Mr.J.Subash
for Mr.A.K.Jayaraj
For Respondents : Mr.Rajendran Raghavan, Senior Standing Counsel

ORDER

An order in original dated 23.01.2024 is challenged in this writ petition. By such order, the declared description of goods as "unflavoured supari (betel nut product); APL supari (boiled betel nut product)" was rejected and it was held that the products are "areca nuts split". As a consequence, the declared classification in the relevant bills of entry were rejected and the goods were reclassified. The assessable values were revised on that basis and customs duty and penalty was imposed.

2. The petitioner assails the said order on the ground that principles

of natural justice were violated by rejecting the petitioner's request for cross-examination. The petitioner also raises other grounds on the merits of the order, but the same are not of significance at this juncture.

3. Learned counsel for the petitioner submits that the denial of the right of cross-examination vitiates the order. In support of this contention, learned counsel relies upon the judgment of the Supreme Court in *Andaman Timber Industries v. Commissioner of Central Excise, Kolkata – II, 2017 (50) STR 93 (SC) (Andaman Timber Industries)*, particularly paragraph 6 thereof. He also relies upon the judgment of the Division Bench of the Calcutta High Court in *Commissioner of Customs, Central Excise & S.T., Siliguri v. Subodh Das, 2023 (385) E.L.T. 693 (Calcutta)*, particularly paragraph 9 thereof. He also points out that the report of the FSSAI with regard to classification was in the petitioner's favour, but a contrary conclusion was drawn on the basis of other reports.

4. Mr.Rajendran Raghavan, learned senior standing counsel, accepts notice for the respondents.

5. At paragraph 19 of the impugned order, it is recorded that the petitioner made a request for cross-examination of the auditors, assessing officers, officers who approved the assessment, the examining staff and the chemical examiner, who tested the samples before assessment. It is further recorded that no cogent reason was adduced for cross-examination. After referring to judgments of the Hon'ble Supreme Court and this Court to the effect that the right of cross-examination is not an absolute requirement and depends on the facts and circumstances, it was concluded that all relevant documentary evidence such as copies of statements, mahazars, reports and RUDs had been provided to the petitioner. In fact, the order contains a categorical statement that all documentary evidence relied upon in the show cause notice had been provided to the petitioner. In these facts and circumstances, the conclusion of the assessing officer does not contain any infirmity and is in consonance with principles laid down by the Supreme Court and this Court. In fact, it is clear from paragraph 6 of the judgment of the Supreme Court in *Andaman Timber Industries* that interference with denial of cross-examination, in that case, was on account of the fact that the

statements of the witnesses, whom the assessee requested to cross-examine, was the basis of the impugned order. Learned counsel for the petitioner is unable to point out as to how the statements of the witnesses sought to be cross-examined form the foundation of the present order. The order impugned in this writ petition can be appealed against. The present writ petition was filed in the last week of April 2024. If the period of pendency of this writ petition is excluded, the petitioner should be permitted to prosecute a statutory appeal.

6. For reasons set out above, W.P.No.13353 of 2024 is disposed of by permitting the petitioner to file a statutory appeal. If such appeal is filed within ten days from the date of receipt of a copy of this order, the Tribunal is directed to receive and dispose of such appeal on merits without going into the question of limitation. There will be no order as to costs. Consequently, connected miscellaneous petition is closed.

20.06.2024

Index : Yes / No
Internet : Yes / No

Neutral Citation: Yes / No
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SENTHILKUMAR RAMAMOORTHY,J

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To

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