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W.P.No.18308 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2024

CORAM :

THE HON'BLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

W.P.No.18308 of 2024 and
W.M.P.No.20097 of 2024

M/s.Indian Overseas Trading Corporation
Represented by its Partner Arshad Shajahan
Son of V.E.Shajahan
No.11, P.H.High Road,
Noombal, Madhurapalikupppam,
Thiruverkadu, Chennai-600 077.

... Petitioner

Versus

The Principal Commissioner of Customs,
Customs House,
Rajaji Salai,
Chennai-600 001.

...Respondent

Prayer : A Writ Petition filed under Article 226 of the Constitution of India pleaded to issue a Writ of Mandamus directing the respondent to permit the petitioner's firm to re-export the containers containing Green Pepper (Fresh) having 1120 bags, with 56000 kilograms of net weight and 56224 kilograms of gross weight imported vide Bill of Entry Number 3619859/23.05.2024 and Container Number FBIU5338160/40RF & SEKU9215873/40RF to the importer M/s.Coma Import Export Company Limited, No.31, Street 16, Him Lam 6A Residential Area, Binh Hung Commune,



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Binh Chanh District, Hochiminh City, Vietnam within a stipulated time considering the perishable nature of the goods that were detained by the office of the respondent and direct the respondent to issue a Detention Certificate for waiver of demurrage and container detention charges in terms of Regulations 6(1)(1) of the handling of Cargo in Customs Areas Regulations, 2009 r/w Regulation 10(1)(1) of the Sea Cargo manifest Transshipment Regulations, 2018 by considering the representation dated 21.06.2024 of the petitioner.

For Petitioner : Mr.P.H.Aravindh Pandian,
Senior Advocate for
Mr.V.Shanmuga Sundar

For Respondent : Mr. H.Siddarth,
Junior Standing Counsel

ORDER

The petitioner is an importer. Two containers of goods labelled as green pepper (fresh) were imported under bill of entry No.3619859 dated 23.05.2024. Upon examining the goods, the customs authorities found that black paper was stored in the container along with green pepper (fresh). The petitioner asserts that he was under the *bona fide* impression that the goods corresponded with the invoice and other documents in relation thereto. It is further stated that the exporter issued a communication stating that these goods were intended for the port at Jebel Ali,



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Dubai and was to be delivered to A.S. Impex General Trading FZCO. In these circumstances, the petitioner submitted a representation dated 21.06.2024 seeking permission for re-export. Since such representation did not elicit a response from the respondent, the present writ petition was filed.

2. Learned senior counsel for the petitioner invited my attention to the packing list, commercial invoice, phytosanitary certificate and bill of entry and contended that all the documents described the goods as green pepper (fresh). In these circumstances, he submits that the petitioner was justified to proceed on the *bona fide* belief that the containers contained only green pepper (fresh). By referring to the communication from the exporter, he submits that the petitioner seeks permission for re-exporting the goods since the goods were not intended for the petitioner. He also submits that the goods are perishable and that orders may be passed expeditiously. He relies upon the judgment of the Division Bench of this Court in the *Assistant Commissioner of Customs - Imports, Custom House and another v. Mahadev Enterprises, W.A.(MD).No.556 of 2022*,



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dated 23.06.2022 and contends that the petitioner is willing to execute a bond for the value of the goods pending adjudication.

3. Mr.Siddarth, learned junior standing counsel, accepts notice for the respondent. He submits that the judgment of the Division Bench pertains to a classification dispute, whereas, in the present case, the issue relates to mis-declaration. Learned senior counsel, however, points out that the Division Bench judgment also dealt with mismatch. Mr.Siddarth also submits that the petitioner's representation would be considered and disposed of within a reasonable time.

4. The petitioner has placed on record the representation dated 21.06.2024. By such representation, the petitioner has requested for permission for re-export. Given the fact that the goods are perishable, it is just and appropriate that the representation be considered and disposed of expeditiously.

5. For reasons aforesaid, W.P.No.18308 of 2024 is disposed of



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by directing the respondent to consider and dispose of the representation dated 21.06.2024 in accordance with law within two weeks from the date of receipt of a copy of this order. The respondent is directed to act on the web copy of the order. Consequently, WMP No.20097 of 2024 is closed. No costs.

12.07.2024

Index : Yes /No

Speaking Order : Yes /No

Neutral Case Citation : Yes /No

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SENTHILKUMAR RAMAMOORTHY J.

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To



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The Principal Commissioner of Customs,
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