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W.P.No.30338 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2024

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.30338 of 2023
and W.M.P.Nos.29923, 29921 of 2023

M/s.Radha Industries,
Represented by its Partner,
Umesh Kumar Prashar,
S/o.Krishan Kumar Parashar, aged 60 years,
4/3, Patel Nagar East, West Delhi,
New Delhi - 110 008.

... Petitioner

-VS-

1.Commissioner of Customs,
Rajaji Salai, Customs House,
Chennai, Tamil Nadu - 600 001.

2.Deputy Commissioner of Customs,
Group-1, Rajaji Salai,
Customs House, Chennai,
Tamil Nadu - 600 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of

India, pleased to issue a Writ of Certiorarified Mandamus, calling for



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the records of the 2nd respondent with respect to provisional assessment of Bill of Entry No.6570809 dated 24.06.2023 and quash the condition to furnish bank guarantee equal to 105% of the value of goods and bond equal to 100% of the value of goods which has been imposed, and consequently direct the respondents to immediately release the goods imported by the petitioner vide Bill of Entry No.6570809 dated 24.06.2023 unconditionally.

For Petitioner : Mr.Mukul Singla

For Respondents : Mrs.R.Hemalatha,
Senior standing counsel

ORDER

The petitioner assails the conditions imposed in relation to the provisional assessment of Bill of Entry No.6570809 and seeks a consequential direction for the unconditional release of goods imported under the above mentioned Bill of Entry.



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2. The petitioner is an importer of areca nuts. According to the petitioner, areca nuts were imported from Sri Lanka under Bill of Entry No.6570809 on 24.06.2023. In accordance with the free trade agreement between India and Sri Lanka, it is stated that these goods are exempt from customs duty. For purposes of availing of such exemption, the petitioner states that a certificate of origin is required to be produced and that the petitioner produced such certificate of origin from the Department of Commerce, Sri Lanka. On the alleged ground that the certificate may not be genuine, the petitioner states that onerous conditions were imposed when the goods were provisionally assessed. The present writ petition was filed in the said facts and circumstances.

3. Learned counsel for the petitioner invited my attention to the certificate of origin and pointed out that the said certificate of origin contains a QR Code. Consequently, when a request was made for



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issuance of a verification certificate, the High Commission of Sri Lanka refused to do so by pointing out that the QR Code can be verified in real time. According to learned counsel, verification is not supposed to be undertaken on a mechanical basis and that the circular dated 17.08.2021 of the Central Board of Indirect Tax and Customs specifies that it is not necessary to verify the origin of goods imported from the same manufacturer / producer unless the subsequent consignment was modified with regard to manufacturing or other origin related conditions.

4. Learned counsel also relied upon the following judgments:

1. *Unique Spices v. Commissioner of Customs and another*, (2019)9 GSTR - OL 28.
2. *N and N Traders v. Assistant Commissioner of Customs & Others*, (2023) SCC On line Madras 5900.
3. *Chalissery Kirana Merchant & others v. Union of India & Others* 2015(324) ELT 112 (Ker.)



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and pointed out that in all these cases the importer was permitted to clear the goods without providing a bank guarantee. Similarly, learned counsel submits that the petitioner may be permitted to clear the goods subject to provision of a bond but without insisting on a bank guarantee.

5. In response to these submissions Mrs.R.Hemalatha, learned senior standing counsel, submits that the Directorate of Revenue Intelligence (DRI) had noticed that certificates of origin in relation to imports from Sri Lanka were being fabricated. Consequently, it was decided that such certificates of origin would be subject to scrutiny before the relevant goods are cleared for home consumption.

6. Learned counsel further submitted that provisional assessment was undertaken in terms of Section 18 of the Customs Act, 1962 (the Customs Act) and that clause (c) of sub-section (1) thereof enables further enquiry even in cases where the importer has



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produced all the necessary documents. By referring to Section 28DA of the Customs Act, learned counsel pointed out that sub-sections 4 and 5 thereof also enable verification and release of goods subject to furnishing by the importer of security for an amount equal to the difference between the duty provisionally assessed and the preferential duty claimed.

7. The admitted position is that the Bill of Entry was issued on 24.06.2023. As such, more than six months have lapsed since the goods were brought into India. In the counter of the respondents, at paragraph 9, there is reference to the DRI having noticed manipulation of certificates of origin by unscrupulous importers. However, there is nothing to indicate that the petitioner indulged in manipulation of the certificate of origin relating to the present Bill of Entry or any other bill of entry. It should be recognized that areca nuts have a limited shelf-life and the risk of contamination and deterioration of goods increases over time.



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9. Accordingly, W.P.No.30338 of 2023 is disposed of on the following terms:

(i) The first respondent is directed to conclude the verification within a maximum period of *thirty days* from the date of receipt of a copy of this order. If the certificate is found to be genuine upon such verification, the goods shall be released without insisting on payment of duty. On the other hand, if the certificate is found to be not



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genuine, it is open to the respondents to take further action in accordance with law.

(ii) If the verification is not completed within the above mentioned period of *thirty days*, the petitioner would be entitled to provisional release of the goods on providing a bond for 100% of the value of goods but without insisting on a bank guarantee. Upon completion of verification, further action will be as indicated in clause (i) above, i.e. based on the outcome of such verification.

(iii) The release of the goods shall, in all situations, be subject to approval by the relevant food safety authorities.

(iv) There shall be no order as to costs.

(v) Consequently, connected W.M.P.Nos.29923, 29921 of 2023 are closed.

02.01.2024

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Index : Yes / No

Internet : Yes / No



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WEB COPY **To**

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Rajaji Salai, Customs House,
Chennai, Tamil Nadu - 600 001.

- 2.Deputy Commissioner of Customs,
Group-1, Rajaji Salai,
Customs House, Chennai,
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SENTHILKUMAR RAMAMOORTHY,J

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