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W.A.No. 3274 of ----

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2024

CORAM :

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ**

**Writ Appeal No.3274 of 2023
and
CMP.No.26689 of 2023**

The Additional Commissioner of Customs (Group 1),
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.
Appellant

..

Versus

M.R.J. Trading,
Represented by its Proprietor,
Mr.Abdulla Jasim M.P.,
1/85-A, Kunnathkavu Temple,
Kollanur, Palakkad Ponnani Road,
Eravakkad Post, Kappur,
Palakkad, Kerala - 679552.
Respondent

..

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside
the order dated 04.09.2023 made in W.P. No.21506 of 2023.

For Appellant : Mr.K.Umesh Rao

For Respondent : Mr.Hari Radhakrishnan
for M/s.N.Akilandeswari



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JUDGMENT

(Judgment of the Court was made by R. MAHADEVAN, J.)

This Writ Appeal has been filed by the Revenue, challenging the order dated 04.09.2023 passed by the learned Judge in W.P.No.21506 of 2023.

2. According to the appellant, the respondent / writ petitioner had filed a Bill of Entry No.4558512 dated 08.02.2023 for clearance of cargo viz., “Srilankan Origin Black Pepper (500 bags) and had classified the same under the Customs Tariff Heading (CTH) 0904 1190 which deals with 'other' pepper. They declared the unit price of the imported good as Rs.430/- per kg. As per the notification No.21/2015-2020 dated 25.07.2018 issued by the Directorate General of Foreign Trade, import of black pepper is free, if CIF value is above Rs.500/- per kg and else, it is prohibited. Therefore, the imported item appears to be prohibited for import and is liable to be confiscated under section 111(d) of the Customs Act, 1962, and the importer appears to be liable for penal action under section 112(a) of the Customs Act, 1962. Accordingly, the imported consignment was subjected to legal formalities and the total assessable value of the same was re-determined with applicable duty.

While so, the respondent / writ petitioner preferred WP. No. 10215 of 2023,



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in WP(C) No.23023 of 2018 has stayed the impugned notification on 19.07.2018. By order dated 31.03.2023, the learned Judge disposed of the said writ petition, by directing the authorities to pass appropriate orders, on merits and in accordance with law, after affording an opportunity of hearing to the respondent, within a period of four weeks. Pursuant thereof, the appellant passed an order dated 10.06.2023, rejecting the request of provisional release of the imported goods. Consequently, a show cause notice dated 08.06.2023 under section 124 of the Customs Act, 1962, came to be issued to the respondent / writ petitioner. Challenging the same, the respondent filed WP. Nos. 21506 and 21510 of 2023, which were disposed of, by the learned Judge, by a common order dated 04.09.2023, the relevant passage of which is quoted below for ready reference:

“14. Thus, there is no mandate that the goods shall be absolutely confiscated and vested with the Government. They can be released provisionally under section 110-A of the Act pending adjudication. Taking note of the above view of the Madurai Bench of this court, Court is inclined to order a provisional release of the imported consignment of black pepper subject to petitioner furnishing suitable securities in the form of guarantee and subject to the meeting standards prescribed by the Food Safety Authority under the provisions of the Food Safety and Standards Act, 2006. The petitioner shall also pay Customs duty provisionally at Rs.500/- per kg. The value of Rs.500/- per kg shall be provisional. The value may be enhanced if the imported consignment of black pepper is actually of higher value.

15. The respondent shall send the sample for testing to the approved testing laboratories recognised by the Food Safety Authorities under the said Act. If the imported consignment of black pepper meets the safety requirement under the said Act, the imported consignment shall be allowed to be cleared provisionally on at Rs.500/- per kg and payment of Customs duty, after obtaining necessary security from the petitioner for any redemption fine that may be imposed on the petitioner under Section 125 of the Customs Act, 1962, after proper adjudication. This exercise shall be



carried out by the respondent within a period of thirty days from the date of receipt of a copy of this order.

16. The petitioner has already been issued with show cause notice No.27/2023 dated 08.06.2023 bearing Ref.F.No.CUS/APR/MISC/4167/2023-GR 1 which is impugned in W.P.No.21506 of 2023. Therefore, the respondent may issue suitable corrigendum show cause notice No.27/2023 dated 08.06.2023 to the petitioner for imposing redemption fine, if any on the imported consignment of black pepper proposed to be released pursuant to this order subject to the petitioner complying with the above conditions.”

Aggrieved by the aforesaid order of the learned Judge directing the provisional release of the imported goods, on terms, the appellant / Revenue has come up with this writ appeal.

3.On 21.11.2023, when the appeal was taken up for consideration, this court has granted an order of interim stay in respect of the aforesaid order of the learned Judge and the said interim order is in force, till date.

4.On the previous occasion, i.e., on 10.01.2024, when the matter came up for hearing, the learned counsel for the respondent / writ petitioner prayed for an order directing the appellant to release the imported goods subject to payment duty, for the purpose of re-export. Therefore, this court directed the learned standing counsel for the appellant to get instructions in this regard.

5.Accordingly, the appellant filed an affidavit to the Registry on 18.01.2024, wherein, in paragraph 7, it is stated as follows:

“7. I state that the Department has "no objection" to permit the re-export of the goods covered under Bill of Entry No.4558512 dated 08.02.2023, provided the all the questions of law and grounds raised against the observations against the Department in both the writ petitions



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in their respective Writ Appeals are kept pending and the Department is permitted to pursue and prosecute those Writ Appeals even though the goods have been de-facto re-exported and that such re-export will not tender the Writ Appeals "infructuous".

6.Reiterating the averments so made in the affidavit, the learned counsel appearing for the appellant submitted today that the appellant has no objection to permit the respondent / writ petitioner to re-export the subject goods, leaving the issues involved herein to be kept open for adjudication, for which, there is no objection on the side of the respondent / writ petitioner.

7.In view of the above, this court directs the appellant to pass orders, permitting the respondent / writ petitioner to re-export the imported goods covered under Bill of Entry No.4558512 dated 08.02.2023, as expeditiously as possible. However, the issues involved in the present proceedings, are kept open for adjudication. The affidavit filed by the appellant on 18.01.2024, shall form part of this order.

8.Accordingly, the order of the learned Judge is modified and this writ appeal stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

[R.M.D., J.] [M.S.Q., J.]
19.01.2024

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To
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