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W.A(MD)No.556 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.06.2022

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

W.A(MD)No.556 of 2022
and C.M.P.(MD) No.4839 of 2022

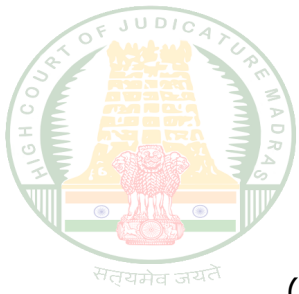
- 1.The Assistant Commissioner of Customs - Imports,
Custom House,
New Harbour Estate,
Tuticorin – 628 004.
- 2.The Additional Commissioner of Customs – Imports,
Custom House,
New Harbour Estate,
Tuticorin – 628 004. ... Appellants/Respondents

Vs.

M/s. Mahadev Enterprises,
Represented by its Proprietor,
Shri Sohil Suchak,
No.31A W No.39, Maskasath,
Kirana Bazar, Itwari,
Nagpur – 440 002. ... Respondent/Writ Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 28.04.2022 in W.P(MD)No.8916 of 2022 and allow the Writ Appeal.

For Appellants : Mr.B.Vijay Karthikeyan
For Respondent : Dr.S.Krishnanadh,
for Mr.M.Ramasamy



JUDGMENT

(Judgment of the Court was delivered by S.S.SUNDAR,J.)

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Challenging the order of learned Single Judge dated 28.04.2022, made in W.P.(MD) No.8916 of 2022, the respondent in the writ petition has preferred the above appeal.

2. Heard Mr.B.Vijay Karthikeyan, learned counsel appearing for the appellant and Mr.Dr.S.Krishnanadh, for Mr.M.Ramasamy, appearing for the first respondent.

3. The respondent in the writ appeal filed W.P.(MD) No.11589 of 2021 for issuance of a Writ of Mandamus, directing the respondents to permit the petitioner to re-export the goods, namely, Unflavored Supari (Betelnut Product) classifiable under ITC (HS) code 21069030 covered under respective Bills of Entry Nos.7197611 and 7197624 both dated 22.01.2022 covered under Bills of Lading No.BLPLRGN2102381 dated 04.01.2022 consisting of 3 containers i.e., AMFU8846107, TCNU6471174 and TEMU6606496 and BLPLRGN2102383 dated 04.01.2022 consisting two containers i.e., TCNU6333560, TGHU7872147 respectively within a stipulated time considering the perishable nature of the goods that were detained/seized by the office of the respondents and direct the respondents to issue a 'Detention Certificate' for waiver of demurrage and container detention charges in terms of Regulations 6(1)(1) of the



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Handling of Cargo in Customs Areas Regulations, 2009 r/w Regulation 10(1)(1) of the Sea Cargo Manifest Transshipment Regulations, 2018.

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4. The simple prayer in the writ petition is to direct the appellants to permit the respondent to re-export the goods, namely, Unflavored Supari (Betelnut Product) and to issue a 'Detention Certificate' for waiver of demurrage and container detention charges.

5. The respondent imported Betelnut Product with a particular description. Stating that the petitioner has imported goods by wrong classification, the appellants sought to levy duty by classifying the goods under Chapter VIII. However, the respondent stating that he cannot afford to pay tax under the classification proposed, submitted a representation to the appellants that the respondent may be permitted to re-export the goods to avoid tax being assessed under Chapter VIII. It is in this context the respondent has approached this Court by filing the writ petition.

6. Learned Single Judge following the decision of this Court ***dated 29.11.2021 made in W.P.No.24062 of 2021*** in the matter of ***M/s.Unik Traders v. The Additional Commissioner of Customs, Chennai and another***, has held as follows:



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“8.Considering the above, I am inclined to dispose of this writ petition in terms of paragraph No.92 of the aforesaid decision, which has been extracted above. Liberty is also given to the petitioner to participate in the proceedings that may be contemplated by the respondents. The respondents are directed to take action within a period of 30 days from the date of receipt of a copy of this order and come to a decision one way or the other within a period of 15 days thereafter. It is needless to state that before passing such orders, the petitioner shall also be heard.”

7. In the said order, learned Single Judge has given an option to the trader to re-export the imported goods, if they are held to be prohibited to be imported to mitigate the loss. In the same order, the appellants were permitted to impose or collect penalty, if the circumstances so warrant. It is against the order of learned Single Judge, the above appeal is preferred.

8. Though learned Standing Counsel for the appellants argued at length, this Court is unable to find any justification for the stand taken by the appellants. It is admitted before this Court that the decision of this Court in **Unik Traders** case (supra) is not challenged by the appellants



in any forum and this Court is not convinced as to how the circumstances in the present can be dealt with differently. Though learned Standing Counsel for the appellants attempted to distinguish the decision in **Unik Traders** case (supra) under the pretext that there are some safeguards available to the Department, as it is seen from the facts of the case, this Court has no reason to allow this appeal as the counsel for the respondent has agreed that there may be sufficient protection to the appellants in the present case also, so that there will not be any revenue loss to them in any circumstances.

9. When we go little deeper into the facts of the case, this Court is unable to find merit in any of the grounds raised in the appeal. In the factual context, we have understood necessary facts leading to this appeal and the following facts are not in dispute:-

The petitioner is an establishment doing import and export of various commodities, including Arecanut/Betelnuts. The respondent has imported Betelnuts Products commonly known as unflavored Supari to an extent of 1,35,600 kgs. vide 2 Bills of Lading. As per the declaration given by the respondent the goods imported by the respondent fall under Chapter heading 21069030 and the goods were classified accordingly.



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10. There is no dispute that the respondent imported Betelnuts Products in five different containers covered by two Bills of Lading both dated 22.01.2022. The question is whether the imported Betelnuts comes under 21069030 or Chapter 21. The respondent made strenuous efforts in convincing the appellants that he cannot afford to pay tax by classifying the goods under Chapter VIII. Therefore, the respondent only sought for permission to re-export the goods to mitigate the loss. It is in these circumstances, the efforts made by the authorities in the present context to levy and collect tax that cannot be afforded by the respondent in the present instance alone bothers the respondent. Therefore, the efforts of respondent was either to convince the appellants that the goods cannot be taxed and cannot be classified to attract Chapter VIII or to permit the respondent to re-export the goods. Since the delay in taking a decision also causes much financial loss to the respondent the writ petition was filed. However, without prejudice to the rights of the appellants to collect penalty to proceed against the respondent for any other irregularity in the transaction, learned Single Judge has only given some directions. Aggrieved by the observations made by learned Single Judge, by which the respondent was given option to re-export the imported goods, if they are held to be prohibited goods, to mitigate the loss of the writ petitioner, the above appeal is filed by the Department.



11. Learned Single Judge has made it very clear that the order is without prejudice to the appellants' authority to impose penalty or any other charge that may be imposed, depending upon the circumstances. This Court is unable to find any illegality to interfere with the order of learned Single Judge having regard to the nature of the order passed by learned Single Judge.

12. Learned Standing Counsel appearing for the appellants has tried to make a point on the ground that the appellants are unable to asses further liability or the statutory remedy that is available to the department for want of investigation by the investigation agency namely Directorate of Revenue Intelligence (DRI).

13. The respondent has no objection to submit himself for enquiry. As a matter of fact the investigation is going on and the respondent has already appeared before the investigation agency once. This Court is unable to find any reason to interfere with the order of learned Single Judge, which gives only simple direction to the appellants to complete the adjudication process one way or the other with an option to the respondent to re-export the goods back to the place from where the goods were imported. As pointed out by this Court earlier, this Court do not find any merit in the grievance expressed by learned counsel for the appellants.



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14. In the present context, the respondent has given an undertaking that they will execute a bond to cover the value of the goods, pending adjudication, if, the appellants permit him to re-export the goods taking into consideration the fact that goods are perishable and there is possibility that the value of goods will be reduced by efflux of time. It will be in the interest of both to permit the respondent to re-export the goods subject to reasonable conditions to protect the interest of the Revenue.

15. In view of the above, this Court while dismissing the Writ Appeal, directs the appellants to permit the respondent to exercise their option as per the order of learned Single Judge upon the respondent executing a bond to the full value of the goods that is sought to be re-exported and this order or direction is issued without prejudice to the rights or authority of the appellants to proceed further with the investigation and to impose or collect whatever charges that may be permissible under law. No Costs. Consequently, connected Miscellaneous Petition is closed.

[S.S.S.R.,J] [S.S.Y.,J.]
23.06.2022

Index :Yes/No

Internet :Yes/No

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Note: Issue copy by 24.06.2022



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S.S.SUNDAR,J.
and
S.SRIMATHY,J.

sj

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