



2025:KER:90480

WP(C)No.33519 OF 2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

FRIDAY, THE 28TH DAY OF NOVEMBER 2025 / 7TH AGRAHAYANA, 1947

WP(C) NO. 33519 OF 2025

PETITIONER/S:

SRI. SHIMWAS HUSSAIN,AGED 35 YEARS
S/O.K.P.HUSSAIN,PROPRIETOR, M/S. DECCAN TRADERS, DOOR
NO. 4/142, VALAPATTANAM, PAPPINISSERY, KANNUR,,, PIN
- 670010

BY ADVS.

SRI.M.BALAGOPAL

SMT.R.DEVIKA

SMT.ANJALI MENON

SHRI.ARJUN VARGHESE KURIAPPAN

SHRI. ADITYA UNNIKRIISHNAN

RESPONDENT/S:

- 1 THE ADDL./JOINT COMMISSIONER OF CUSTOMS
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS, OFFICE
OF THE COMMISSIONER OF CUSTOMS, CUSTOM HOUSE,
WILLINGDON ISLAND, COCHIN,, PIN - 682009
- 2 THE ASSISTANT/DEPUTY COMMISSIONER OF CUSTOMS (SPECIAL
INTELLIGENCE & INVESTIGATION BRANCH),
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS, OFFICE
OF THE COMMISSIONER OF CUSTOMS CUSTOM HOUSE,
WILLINGDON ISLAND, COCHIN,, PIN - 682009
- 3 THE ASSISTANT/DEPUTY COMMISSIONER OF CUSTOMS
(APPRAISING IMPORTS),
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS, OFFICE
OF THE COMMISSIONER OF CUSTOMS CUSTOM HOUSE,
WILLINGDON ISLAND, COCHIN,, PIN - 682009

BY ADV SHRI.SUVIN R.MENON, SENIOR STANDING COUNSEL
FOR CUSTOMS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29.10.2025, THE COURT ON 28.11.2025 DELIVERED THE FOLLOWING:



JUDGMENT

This writ petition is submitted by an importer, being aggrieved by the proceedings initiated against the petitioner, by detaining the goods imported by the petitioner under the provisions of the Customs Act, 1962, alleging misclassification of the goods.

2. The facts that led to the filing of the writ petition are as follows: The petitioner is an importer and trader of the product by name "*NATA DE COCO*" which is an edible product obtained by cooking and fermentation of coconut water and coconut milk. Exhibits P1 to P4 are the bills of the entries in respect of the import made by the petitioner. The said import was made from Vietnam and as per the invoices and the bill of entries the classification of the goods was made under the Customs Tariff Act, (CTH) 2007 9990. According to the petitioner this is the classification made by the exporting country and in Ext.P17 Indian Coconut Journal published in December, 2017 by the Ministry of Agriculture also, the classification of the said product is 2007 9990. Thus, according to the petitioner, the petitioner had correctly classified the goods and furnished the documents and declarations in this regard.

3. However, the officer attached to the 2nd respondent detained the goods and issued Ext.P20 seizure memorandum stating that he



has reason to believe that the goods are misdeclared. On making a request for provisional release of the goods, the 2nd respondent issued Ext.21 provisional release order requiring the petitioner to execute a bond for Rs.5,50,768/- being the value of the seized goods and also to furnish a bank guarantee or cash deposit in favour of the Commissioner of Customs for an amount of Rs. 2,50,000/-. As against Ext.P21, the petitioner submitted Ext.P22 request for modifying the provisional release order, but the same was rejected as per Ext.P23. This writ petition is submitted in such circumstances challenging Ext.P20 seizure memo and Ext.P21 provisional release order. A consequential direction was also sought to release the goods without insisting for security by way of bank guarantee. A further direction was sought to the respondents to clear future consignments of the petitioner on execution of bond, without insisting for security by way of bank guarantee/cash deposits/other security.

4. Initially, a statement was filed on behalf of the respondents opposing the reliefs sought by the petitioner and also denying the averments contained in the writ petition. It was averred in the said statement that, on examining the goods, some doubts arose with regard to the classification of the goods and in such circumstances, invoking the powers under Section 110 of the Customs Act, the officer



concerned, upon reaching a reasonable belief as to the misclassification, Ext.P20 memo was issued. It was also averred that, now an investigation is pending and if necessary, a show cause notice would be issued to the petitioner as per section 124 of the Customs Act.

5. Later, a counter affidavit was submitted by the respondents further explaining the steps taken by the respondents. Along with the said counter affidavit, the respondent produced Ext.R1(b) communication, wherein the petitioner requested for release of the goods by agreeing to furnish a suitable bank guarantee as per the provisions of the Customs Act. According to the respondents, Ext.P21 was issued based on the same. It was further averred that, a show cause notice dated 28.10.2025 is already issued to the petitioner proposing to confiscate the goods as it was found that, the transaction falls under Section 111(m) and (o) of the Customs Act, 1962. Thus, it was contended that, the reliefs sought in this writ petition cannot be considered at this juncture as it is premature, since the question regarding the misclassification is to be decided in the said proceedings, and if the petitioner has any grievance against the same, the petitioner can invoke the statutory appellate remedies against the same.



6. I have heard Sri. M. Balagopal, the learned counsel for the petitioner and Sri. Suvin R. Menon, the learned Senior Standing Counsel for the respondents.

7. The main contention raised by the petitioner is that, as far as the classification made by the petitioner is concerned, it is in tune with the classification made by the exporting country which is clearly mentioned in the invoices and the bills of entry. According to him, the said classification is supported by Ext.P17, which is an official journal published by the Ministry of Agriculture. Thus, it was pointed out that, the petitioner had made the declaration with all bonafides, acting upon the classification, as reflected in the above documents, and hence the petitioner cannot be subjected to any penal proceedings in respect of the same. According to the learned counsel for the petitioner, in case, the respondent has a case that, the classification of the goods made by the petitioner was not correct, the respondents are competent to collect the duty as per correct classification according to them, instead of the importer being subjected to penal proceedings on account of the same. It was also contended that, the case of this nature would not fall under any of the situations contemplated under section 111 of the Customs Act, that deals with the circumstances under which, the confiscation of the goods can be



ordered.

8. On the other hand, the learned Standing Counsel for the respondents would oppose the aforesaid contentions by pointing out that, it is a clear case that falls under 111(m) & (o) of the Customs Act. It was also pointed out that, by declaring the classification 2007 9990, the petitioner availed exemption from payment of duty, whereas, in the investigation, it was found that the said goods would fall under the classification 2008 9999. The learned Standing Counsel also brought to the notice of this Court, Ext.R1(c) show cause notice issued under section 124 of the Customs Act and it was pointed out that the proceedings in respect of the same are pending consideration. Thus, it was contended that, the writ petition is premature and the reliefs sought cannot be granted.

9. I have carefully gone through the records and examined the contentions raised by both sides. As far the reliefs sought in the writ petition are concerned, the same are mainly against Ext.P20 seizure memo issued against the petitioner and also against the condition imposed for provisional release of the articles. When it comes to the question of challenge against Ext.P20 seizure memo it is to be noted that, it is the preliminary step to be taken by the officer concerned before initiating any proceedings for confiscation under the Customs



Act. The only condition for seizing the article by invoking the power under section 110 of the Act is that, the proper officer must have reason to believe that, the goods are liable to confiscation under the Customs Act. Thus what is relevant is the "reasonable belief" of the officer concerned that, the goods are liable to be confiscated. The circumstances under which a confiscation can be made are contemplated under section 111, in which, sub section (m) and (o) reads as *follows*:

*"111. Confiscation of improperly imported goods, etc.—
The following goods brought from a place outside India
shall be liable to confiscation:—*

xxxx xxxx xxxx xxxx xxx

xxxxx xxxx xxxx xxxx xxx

*(m) [any goods which do not correspond in respect of
value or in any other particular] with the entry made
under this Act or in the case of baggage with the
declaration made under section 77 3 [in respect thereof,
or in the case of goods under transshipment, with the
declaration for transshipment referred to in the proviso to
sub-section (1) of section 54];*

*(o) any goods exempted, subject to any condition, from
duty or any prohibition in respect of the import thereof
under this Act or any other law for the time being in
force, in respect of which the condition is not observed
unless the non-observance of the condition was
sanctioned by the proper officer."*

10. The learned counsel for the petitioner submits that, in this case, there is nothing to indicate that, the officer concerned, while issuing Ext.P20 was under a reasonable belief as to the necessity to initiate confiscation proceedings. This submission is made mainly on the reason that, even in Ext.P20, nothing is mentioned about the



correct classification according to the officer concerned, to be applied to the goods imported. It was pointed out that, even in the initial statement filed by the respondents they could not point out the correct classification, but instead, it was only stated that, the classification made by the petitioner is not correct.

11. However, as far as the said contention is concerned, it cannot be decided in a writ petition at this juncture, as it is something beyond the scope of the writ petition under Art.226 of the Constitution of India. As rightly pointed out by the learned Standing Counsel for the respondents, this Court cannot sit in appeal over the "reasonable belief" expressed by the officer concerned by invoking the powers under Art.226. The observations made by the Hon'ble Supreme Court in ***Indru Ramchand Bharvani and Ors. Union of India and Ors. [(1988) 4 SCC 1]*** in this regard is relevant. It was held in the said decision that, the circumstances under which the officer concerned entertains reasonable belief, have to be judged from his experience eye who is well equipped to interpret the suspicious circumstances and to form a reasonable belief. It is not for the court to sit appeal over the same. In this case, even though the correct classification according to the respondents was not specifically mentioned in Ext.P20, it is a fact that, after conducting an



investigation, a show cause notice under section 124 of the Act is seen issued, mainly pointing out that, the goods of the petitioner would fall under CTH2008, which deals with fruits, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included. It was stated that, the said goods are under the specific entry of 2008 9999.

12. Thus the reasonable belief expressed by the officer concerned, while issuing Ext.P20, is fortified by the findings in the show cause notice and the proceedings based on the same are now in progress. Since it is a statutory proceeding contemplated under Section 124 of the Act, which should be followed from the proceedings under section 110 of the Act, the question as to be sustainability of the classification cannot be considered by this Court in writ jurisdiction. This is because, the adjudication of the dispute involved, being a factual aspect, it has to be examined by the competent authorities, and this Court cannot conduct a parallel enquiry in connection with the same. Moreover, as against the said proceedings, the petitioner has an alternate remedy of appeal, if the show cause notice results in an adverse order.

13. When it comes to the reasonableness of the condition



imposed in Ext.21 provisional release order, it is to be noted that, the challenge made by the petitioner is against the bank guarantee directed to be furnished by the petitioner. However, in Ext.R1(b) communication, the petitioner himself sought the release of the article against a suitable bank guarantee as per the provisions of the Customs Act. Therefore, the petitioner cannot now turn around and contend that he cannot be imposed with a condition of furnishing a bank guarantee.

In such circumstances, after considering all the relevant aspects, I am of the view that, the contentions raised by the petitioner in this writ petition cannot be considered at this stage of the proceedings and all those are matters, to be adjudicated by the statutory authorities. Therefore, I do not find any merit in the writ petition and accordingly it is dismissed. However, it is clarified that, this Court did not express any opinion in respect of the classification made by the petitioner or the respondents, and the said question has to be considered by the competent authority, untrammelled by any of the observations made in this writ petition.

Sd/-

ZIYAD RAHMAN A.A.
JUDGE

pkk

APPENDIX OF WP(C) 33519/2025

PETITIONER EXHIBITS

EXHIBIT P1 TRUE COPY OF THE RELEVANT PAGES (PAGE 1 TO 3) OF THE BILL OF ENTRY NO.8684133 DATED 04.03.2025.

EXHIBIT P2 TRUE COPY OF THE RELEVANT PAGES (PAGE 1 TO 3) OF THE BILL OF ENTRY NO.8684203 DATED 04.03.2025.

EXHIBIT P3 TRUE COPY OF THE RELEVANT PAGES (PAGE 1 TO 3) OF THE BILL OF ENTRY NO.2094365 DATED 16.05.2025.

EXHIBIT P4 TRUE COPY OF THE RELEVANT PAGES (PAGE 1 TO 3) OF THE BILL OF ENTRY NO.3599592 DATED 31.07.2025.

EXHIBIT P5 TRUE COPY OF THE COMMERCIAL INVOICE NO. HX-ID/170225 DATED 17.02.2025 PERTAINING TO EXHIBIT - P1.

EXHIBIT P6 TRUE COPY OF THE ASEAN - INDIA FREE TRADE AREA PREFERENTIAL TARIFF CERTIFICATE OF ORIGIN NO.VN-IN 25/02/002914 DATED 03.03.2025 PERTAINING TO EXHIBIT - P1.

EXHIBIT P7 TRUE COPY OF THE BILL OF LADING NO. BHCM25020296 DATED 24.02.2025 PERTAINING TO EXHIBIT - P1.

EXHIBIT P8 TRUE COPY OF THE COMMERCIAL INVOICE NO.IN170225/NDC DATED 17.02.2025 PERTAINING TO EXHIBIT - P2.

EXHIBIT P9 TRUE COPY OF THE ASEAN - INDIA FREE TRADE AREA PREFERENTIAL TARIFF CERTIFICATE OF ORIGIN NO.VN-IN 25/02/002642 DATED 26.02.2025 PERTAINING TO EXHIBIT - P2.

EXHIBIT P10 TRUE COPY OF THE BILL OF LADING NO. BHCM25020301 DATED 24.02.2025 PERTAINING TO EXHIBIT - P2.

EXHIBIT P11 TRUE COPY OF THE COMMERCIAL INVOICE NO.IN220425/NDC DATED 22.04.2025 PERTAINING TO EXHIBIT - P3.

EXHIBIT P12 TRUE COPY OF THE ASEAN - INDIA FREE TRADE AREA PREFERENTIAL TARIFF CERTIFICATE OF ORIGIN NO.VN-IN 25/02/006174 DATED 07.05.2025 PERTAINING TO EXHIBIT - P3.

EXHIBIT P13 TRUE COPY OF THE BILL OF LADING NO. BHCM25040668 DATED 29.04.2025 PERTAINING TO EXHIBIT - P3



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EXHIBIT P14	TRUE COPY OF THE COMMERCIAL INVOICE NO.IN150725/NDC DATED 15.07.2025 PERTAINING TO EXHIBIT - P4
EXHIBIT P15	TRUE COPY OF THE ASEAN - INDIA FREE TRADE AREA PREFERENTIAL TARIFF CERTIFICATE OF ORIGIN NO.VN-IN 25/02/010578 DATED 25.07.2025 PERTAINING TO EXHIBIT - P4
EXHIBIT P16	TRUE COPY OF THE BILL OF LADING NO. BHCM25070405 DATED 23.07.2025 PERTAINING TO EXHIBIT - P4
EXHIBIT P17	TRUE COPY OF THE RELEVANT PAGES (PAGE 3, 26 & 27) OF THE INDIAN COCONUT JOURNAL PUBLISHED IN DECEMBER, 2017
EXHIBIT P18	TRUE COPY OF THE SECOND REVIEW ORDER NO.43/2025 DATED 28.08.2025 IN EXT - P1 BILL OF ENTRY.
EXHIBIT P19	TRUE COPY OF THE SECOND REVIEW ORDER NO.36/2025 DATED 10.07.2025 IN EXT - P2 BILL OF ENTRY.
EXHIBIT P20	TRUE COPY OF THE SEIZURE MEMORANDUM F. NO. CUS/SIIB/INT/297/2025-SIIB DATED 13.06.2025
EXHIBIT P21	TRUE COPY OF THE PROVISIONAL RELEASE LETTER F. NO. CUS/SIIB/INT/297/2025-SIIB DATED 11.07.2025
EXHIBIT P22	TRUE COPY OF THE PETITIONER'S LETTER DATED 14.07.2025 ISSUED TO THE 2ND RESPONDENT
EXHIBIT P23	TRUE COPY OF THE LETTER NO. CUS/SIIB/INT/297/2025-SIIB DATED 25.07.2025
EXHIBIT P24	TRUE COPY OF THE RELEVANT PAGES (PAGE 1 AND 2) OF THE BILL OF ENTRY NO. 8023146 DATED 27.01.2025 FILED BY THE PETITIONER FOR THE IMPORT OF THE IMPUGNED GOODS
EXHIBIT P25	TRUE COPY OF THE RELEVANT PAGES (PAGE 1 AND 2) OF THE BILL OF ENTRY NO. 4458311 DATED 12.07.2024 FILED BY M/S NATA NUTRICO COCONUT FOOD PRODUCTS LIMITED FOR THE IMPORT OF THE IMPUGNED GOODS HE
EXHIBIT P26	TRUE COPY OF THE RELEVANT PAGES (PAGE 1 AND 2) OF THE BILL OF ENTRY NO. 6972360 DATED 30.11.2024 FILED BY THE PETITIONER FOR THE IMPORT OF THE IMPUGNED GOODS.
EXHIBIT P27	TRUE COPY OF THE RELEVANT PAGES (PAGE 1 AND 2) OF THE BILL OF ENTRY NO. 6014173 DATED 08.10.2024 FILED BY M/S NATA NUTRICO COCONUT FOOD PRODUCTS LIMITED FOR THE IMPORT OF THE IMPUGNED GOODS



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EXHIBIT P28

TRUE COPY OF THE RELEVANT PAGES (PAGE 1 AND 2) OF THE BILL OF ENTRY NO. 9749091 DATED 28.04.2025 FILED BY THE PETITIONER FOR THE IMPORT OF THE IMPUGNED GOODS.

RESPONDENT EXHIBITS

EXHIBIT R1(B)

A TRUE COPY OF THE LETTER DATED NIL, SUBMITTED BY THE PETITIONER

EXHIBIT R1(C)

A TRUE COPY OF THE SHOW CAUSE NOTICE NO. CUS/SIIB/INT/297/2025-SIIB DATED 28.10.2025 ISSUED BY THE ADJUDICATING AUTHORITY

EXHIBIT R1(A)

A TRUE COPY OF THE ONE OF THE BILL OF ENTRY SUMMARY FILED BY THE PETITIONER BEFORE THE INDIAN CUSTOMS