



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

MONDAY, THE 19TH DAY OF OCTOBER 2020 / 27TH ASWINA, 1942

WP(C).No.21418 OF 2020(B)

PETITIONER/S:

PARAYIL FOOD PRODUCTS PVT. LTD.
INDUSTRIAL AREA, AROOR PO, ALLEPPEY DISTRICT,
REPRESENTED BY ITS CHIEF FINANCIAL OFFICER, GEORGE
ZACHARIA.

BY ADVS.
SRI.SUNIL JACOB JOSE
SRI.SACHIN JACOB AMBAT

RESPONDENT/S:

- 1 UNION OF INDIA,
REPRESENTED BY THE SECRETARY, MINISTRY OF FINANCE,
NORTH BLOCK, NEW DELHI-110001.
- 2 CENTRAL BOARD OF EXCISE AND CUSTOMS,
REPRESENTED BY ITS CHAIRMAN, NORTH BLOCK, NEW DELHI-
110001.
- 3 COMMISSIONER OF CUSTOMS,
OFFICE OF THE COMMISSIONER OF CUSTOMS, DEPARTMENT OF
REVENUE, MINISTRY OF FINANCE, GOVERNMENT OF INDIA,
CUSTOM HOUSE, WILLINGDON ISLAND, COCHIN-682009.
- 4 JOINT DIRECTOR GENERAL OF FOREIGN TRADE,
OFFICE OF THE JOINT DIRECTOR GENERAL OF FOREIGN
TRADE, A-BLOCK, KENDRIYA BHAVAN, KAKKANAD, COCHIN-
682037.
- 5 DEPUTY COMMISSIONER OF CUSTOMS (EXPORTS),
OFFICE OF THE COMMISSIONER OF CUSTOMS, DEPARTMENT OF
REVENUE, MINISTRY OF FINANCE, GOVERNMENT OF INDIA,
CUTSOM HOUSE, WILLINGDON ISLAND, COCHIN-682009.

R2-3, R5 BY SRI.RAJESH B., SC, CENTRAL BOARD OF
EXCISE & CUSTOMS
R4 BY SRI.GIRISH KUMAR.V., CGC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
19.10.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

Dated this the 19th day of October 2020

The petitioner, an export oriented Company, which is engaged in the export of frozen prepared foods, frozen vegetables, frozen sea food, spices, curry powders etc. to the US, UK and other European countries with its processing centre at Aroor, Alapuzha, through the instant writ petition has challenged the actions of respondents Nos.3 and 5 whereby the request for issuance of No Objection letter to the 3rd respondent to consider the three shipments for fulfilment of export obligations against the advance authorisation granted by the 4th respondent, ie. Joint Director General of Foreign Trade, Cochin, was rejected. The brief material facts for the disposal of the writ petition are:

2. The petitioner has been regularly importing fish from various countries as per availability and the same are processed in the unit of the petitioner and exported as per order placed by consignees, as per the legal stipulations of the different authorities concerned.

3. The 4th respondent through his communication dated 19.4.2016 forwarded advance authorisation permitting the petitioner to import 50,000 kg of frozen King Fish whole round for a total value of Rs.1,42,95,015.70/- (211,935.00 US Dollars), with a



condition to process the imported item and to export 37,500 kg of it as frozen King Fish stake for a value of Rs.1,64,39,268.00/- (243,725.25 US Dollars). Similarly 4th respondent also permitted the petitioner to import 27,000 kgs of frozen Sardine valued at Rs.1,25,3,037.00/ (18,730.00 US dollars) after processing the import item as per Ext.P2. Similarly with regard to another item ie. 55,000 kgs. of frozen King Fish vide Ext.P3 was also granted.

4. The petitioner was facing shortage of raw material for processing, which was imported from Indonesia and processed at its Plant and exported to various countries as per order placed with the petitioner. The petitioner was in receipt of duty free import of the raw materials since the import was made by the petitioner for the purpose of processing and exporting the final product.

5. Learned Counsel for the petitioner submitted that the duty free import was permitted for the purpose of encouraging export. Petitioner was obliged to export finished goods for the value of the duty saved, to be fulfilled within eighteen months (18) months of the import, which is evident from Exts.P4, P5 and P6 of 2016-17 respectively. Due to inadvertent omission on the part of the petitioner, the details of advanced authorisation were omitted to be included in the export invoice or shipping bills, thus, petitioner was eligible only for duty draw back, another scheme granted by the 2nd respondent. The petitioner inadvertently claimed and received a



sum of Rs.1,26,848.00 on account of the export completed through Ext.P4 shipping bill, Rs.6540.53 on account of the export completed through Ext.P5 shipping bill and Rs.9923.78 through Ext.P6. Noticing the inadvertent omission, the petitioner submitted three applications before the 5th respondent, Ext.P7, P8 and P9 intimating the inadvertent claim of Duty Drawback and issuance of No Objection letter to consider three shipments through Exts.P4, P5 and P6 as fulfilment of export obligation against the respective advance authorisations and further requested the 5th respondent to permit them to repay the drawback amount received by them along with the applicable interest thereon. It is submitted that there was no legal impediment for the 3rd respondent to issue a no-objection certificate in terms of Section 149 of the Customs Act, 1962, however, the aforementioned application has erroneously been rejected by applying the provisions of circular dated 23.09.2010, Ext.P11, fixing time line for submission of application for no objection certificate as three months. The statutory provisions of the Act cannot be substituted until and unless there is amendment of Act or by causing ordinance. It is settled law that the department cannot alter the conditions of central statute as per their own convenience and whims in fixing the timeline for submitting application for No Objection Certificate and therefore, the impugned action of the respondent is wholly opaque, arbitrary,



and fallacious.

6. On the other hand, Sri.Rajesh, learned Counsel appearing for the respondent submitted that the circular dated 23.9.2010, Ext.P11 has a binding force. It has been adopted and accepted by all importers and exports and therefore, petitioner cannot challenge the same by applying the doctrine of estoppel. The person cannot be permitted to take the benefit and thereafter summer-salt by laying challenge as it amounts to abrogation and repercussion and urges this Court for dismissal of writ petition.

7. I have heard learned Counsel for the parties and appraised the paper books.

8. For the purpose of issuance of No Objection, provisions of Section 149 of the Customs Act, 1962 envisage the complete procedure for issuance of no objection certificate, ie for the purpose of amendment of a bill of entry or a shipping bill only after fulfilling certain conditions in the proviso. The same read thus:

149. Amendment of documents.—Save as otherwise provided in sections 30 and 41, the proper officer may, in his discretion, authorise any document, after it has been presented in the customs house to be amended: Provided that no amendment of a bill of entry or shipping bill or bill of export shall be so authorised to be amended after the imported goods have been cleared for home consumption or deposited in a warehouse, or the export goods have been exported, except on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, as the case may be.

9. On the other hand, the respondent rejected the application of the petitioner by relying upon condition No.3a of the



Circular which reads thus:

"The request for conversion is made by the exporter within three months from the date of the Let Export Order (LEO)"

10. It is trite law that circulars cannot assume the role of the Principal Act lest the provisions only a binding force. If at all the revenue is facing difficulties in accepting and processing applications for amendment of bills of lading, an amendment to the Principal Act can be suggested in accordance with law and till the pendency of the same, an Ordinance can also be issued. No such stand is taken as evident from Ext.P10. I am afraid the action of the respondent cannot be accepted, for, it is an utter violation of statutory provision of Section 149 of the Customs Act. For the reasons assigned, the impugned order Ext.P10 dated 7.7.2020 is hereby quashed. The writ petition is allowed. Respondents are directed to issue no objection certification seeking amendment of the bill in accordance with law. Let this exercise be done within a period of one month from the date of receipt of a copy of this judgment.

Sd/

AMIT RAWAL

JUDGE

Jm/

**APPENDIX****PETITIONER'S/S EXHIBITS:**

EXHIBIT P1	A PHOTOCOPY OF THE AUTHORIZATION LETTER DATED 19.4.16 OF THE 4TH RESPONDENT.
EXHIBIT P2	PHOTOCOPY OF THE AUTHORIZATION LETTER DATED 11.5.16 OF THE 4TH RESPONDENT.
EXHIBIT P3	PHOTOCOPY OF THE AUTHORIZATION LETTER DATED 26.8.16 OF THE 4TH RESPONDENT.
EXHIBIT P4	PHOTOCOPY OF THE SHIPPING BILL FOR EXPORT PURSUANT TO EXT.P1.
EXHIBIT P5	PHOTOCOPY OF THE SHIPPING BILL FOR EXPORT PURSUANT TO EXT.P2.
EXHIBIT P6	PHOTOCOPY OF THE SHIPPING BILL FOR EXPORT ON EXT.P3.
EXHIBIT P7	PHOTOCOPY OF THE LETTER DATED 17.6.2020 FILED IN RESPECT OF THE RESPECTIVE SHIPMENT.
EXHIBIT P8	PHOTOCOPY OF THE LETTER DATED 17.6.2020 FILED IN RESPECT OF THE RESPECTIVE SHIPMENT.
EXHIBIT P9	PHOTOCOPY OF THE LETTER DATED 17.6.2020 FILED IN RESPECT OF THE RESPECTIVE SHIPMENT.
EXHIBIT P10	PHOTOCOPY OF THE LETTER F.NO.S32A/258/2019 EXP.CUS DATED 7.7.2020 OF THE 5TH RESPONDENT.
EXHIBIT P11	PHOTOCOPY OF THE CIRCULAR NO.36/2010 DATED 23.9.10 OF THE 2ND RESPONDENT.