

2025 (391) E.L.T. 48 (S.C.)

IN THE SUPREME COURT OF INDIA

B.V. Nagarathna and Nongmeikapam Kotiswar Singh, JJ.

N.C. ALEXANDER

Versus

ADDITIONAL COMMISSIONER OF CUSTOMS

Petition for Special Leave to Appeal (C) No. 5159 of 2024, decided on 30-9-2024

Provisional release of goods - Perishable Goods - Apple import - Prohibition contravention - Assessee had imported fresh apples, CIF price of which was below ` 50 per kg. in contravention of D.G.F.T. Notification No. 5/2023, dated 8-5-2023 - Since, said notification had been stayed by Kerala High Court, a single Judge of Madras High Court, in writ proceedings in this case, had directed unconditional provisional release of aforesaid goods as these were perishable and meant for human consumption - In impugned writ appeal order, Division Bench of High Court, had modified order of Single Judge by directing assessee to file Bank Guarantee of differential duty to safeguard interest of Revenue - On filing appeal to Supreme Court by assessee - *HELD* : Vide earlier interim order dated 27-8-2024, Apex Court had already clarified that pendency of this issue before Apex Court would not come in way of similar matters to be decided by High Courts - In a similar matter in Indusina Exim LLP [(2024) 16 Centax 118 (Bom.)] had directed provisional release of a consignment of aforesaid goods of another assessee, by furnishing a Bond - Accordingly, consignments of fresh apples already imported by present appellant and lying uncleared at Customs Warehouse/CFS were directed to provisionally released forthwith, pending final disposal of case, subject to appellant furnishing a Bond - Section 110A of Customs Act, 1962. [paras 2, 3, 4, 5]

Interim order in favour of assessee

CASE REVIEW

Additional Commissioner v. N.C. Alexander — (2023) 13 Centax 21 (Mad.) — **Modified**

CASES CITED

Indusina Exim L.L.P. v. Commissioner — (2024) 16 Centax 118 (Bom.) — *Referred* [Paras 2, 3]

NOTIFICATION CITED

D.G.F.T. Notification No. 5/2023, dated 8-5-2023 [Para 3]

REPRESENTED BY : S/Shri Arvind P. Datar, Ms. Nisha Bagchi, Sr. Advocates, Dr. S. Krishnanandh, Advocate, N. Venkataraman, A.S.G., V.C. Bharathi, Dhruv Sharma, Ms. B. Sunita Rao, Udai Khanna, Annirudh Sharma-ii, Gunmaya S. Mann, Advocates, Aravindh S. and Gurmeet Singh Makker, AORs, for the Appearing Parties.

[Order]. - We have heard Learned Senior Counsel for the petitioner - M/s. N.C. Alexander and Learned ASG and Learned Senior Counsel for the respondent.

2. During the course of submissions our attention was drawn to the interim order passed by the Division Bench of the Bombay High Court in Writ Petition No. 15414/2023, dated 8-12-2023 [(2024) 16 Centax 118 (Bom.)]. Paragraphs 6 and 7 of the said order read as under :

“6. In our view, the petitioner is entitled to provisional release of goods as prayed for more than one reason. Notification No. 5/2023 which imposes minimum price of Rs. 50/- per Kg for import of apples has been stayed by the Kerala High Court. Secondly, only issue is with respect to valuation and goods being perishable in nature and further the petitioner is willing to comply with the terms and conditions to be put forth by respondent No. 2 for provisional assessment of goods there does not seem to be justifiable release to detain the goods. In the light of these facts, it would be in the interest of justice that the petition be allowed in terms of prayer clause (1).

7. We, therefore, direct respondents to provisionally assess the Bill of Entry No. 8733339 within a period of four days from today and release the goods on the petitioner furnishing the bond.”

3. In the said order, it is noted that Notification No. 5/2023, dated 8-5-2023 has been stayed by the Kerala High Court. Secondly, the Bombay High Court has permitted the respondent(s) herein to provisionally assess the Bill of Entry and release the goods to the petitioner therein on 8-12-2023 by furnishing a bond.

4. By order dated 27-8-2024, this Court has observed that pendency of these petitions before this Court would not come in the way of similar matters pending before the High Court being adjudicated on their own merits.

5. In the circumstances, pending disposal of these petitions, we direct that the stock of apples which have been already imported by the petitioners and which are lying in customs warehouse/CFS shall be provisionally released subject to the petitioners furnishing a bond. The said exercise shall be carried out forthwith.

6. It is clarified and observed that this interim order is restricted to the stock of apples already imported and lying in the CFS.