

M/S.Unik Traders vs The Additional Commissioner Of Customs on 29 November, 2021

Author: C.Saravanan

Bench: C.Saravanan

W.P.No.2406

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.11.2021

PRONOUNCED ON : 29.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.24062 of 2021

(Through Video Conferencing)

M/s.Unik Traders
No.140, Old Tharagupet Road,
Bangalore-560 053, Represented by its
Authorised Signatory Shri Asif H.Thara

... Petiti

VS

- 1.The Additional Commissioner of Customs,
Group I, Chennai – II Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai 600 001.
- 2.The Assistant Commissioner of Customs,
Group-I, Chennai – II Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai 600 001.
3. The Principal Additional Director General,
Directorate of Revenue Intelligence,
Mumbai Zonal Unit, 13, Sir Vithaldas
Thackwesey Marg, New Marine Lines,
Mumbai 400 020, Maharastra.

<https://www.mhc.tn.gov.in/judis>

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4. The Intelligence Officer,
Directorate of Revenue Intelligence,
Nagpur Regional Unit, CGO Complex,
"B" Wing, 6th Floor Seminary Hills,
Nagpur-440 006, Maharashtra. ...

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the 2nd respondent to release the Arecanuts imported from Myanmar vide Bills of Entry Nos.5542408 dated 22.09.2021; 5630355 and 5632702 both dated 29.09.2021, which have already been provisionally assessed on execution of a Test Bond by the 2nd respondent and further direct issuance of a " Detention Certificate for Waiver of Demurrage and Container Detention Charges.

For Petitioner	: Mr.Vijay Narayan, Senior Counsel for Mr.B.Satish Sundar
For R1 & R2	: Mr.G.Meganathan, Standing Counsel
For R3 & R4	: Mr.V.Sundareswaran, Senior Standing Counsel

ORDER

The petitioner has filed this writ petition for the issuance of a Writ of Mandamus to direct the 2nd respondent to release the Arecanuts imported from Myanmar.

2. The petitioner has filed Bill of Entry No.5542408 dated <https://www.mhc.tn.gov.in/judis> 22.09.2021 and two Bills of Entry Nos. 5630355 and 5632702 both dated 29.09.2021. The consignments covered by these Bills of Entries have been imported in 16 containers. The Samples from these were sent for testing before the commencement of assessment.

3. The petitioner also appears to have executed a Test Bond before the 2nd respondent. Meanwhile, the Officers from the Directorate of Revenue Intelligence from Nagpur, namely, the third and fourth respondents have intervened and have stalled the further assessment and clearance of the imported consignments covered by these three Bills of Entries.

4. It is the case of the petitioner that the petitioner is incurring Demurrage and Container Detention Charges for the containers to the liners as the imported consignments are not being allowed to be cleared as the assessment has not been completed by the jurisdictional "proper officers" under the jurisdiction of the second and the third respondent at the instance of the third and the fourth respondents. <https://www.mhc.tn.gov.in/judis>

5. It is therefore prayed for a further direction to be issued for the issuance of “Detention Certificate” for the waiver of demurrage and detention charges to be paid to the Consignment Freight Station of Balmer & Lawrie, where the imported goods are lying since their import on 22.9.2021 and 29.9.2021.

6. It is the case of the petitioner that the petitioner is a well known importer and dealer of spices and condiments such as Black Pepper, Cassia, Star Aniseeds etc. and Arecanuts (Betelnuts) and is in the said business for over a period of more than two decades.

7. It is further submitted that the petitioner has a valid Import and Export Code No.0791011917 issued by the office of the JDGFT, Bangalore, attached to the Ministry of Commerce, Government of India.

8. That apart, it is submitted that the petitioner has also registered with the Income Tax and is a Income Tax Assessee. It is further submitted that the petitioner has also registered with the Food Safety and Standards Authority of India and holds Registration <https://www.mhc.tn.gov.in/judis> No.10012043000374.

9. Appearing on behalf of the petitioner, the Learned Senior Counsel Mr.Vijay Narayan duly instructed by Dr.S,Krishnanandh, Advocate submits that the petitioner has imported Arecanuts viz., unflavoured supari (Betelnut products) in sixteen containers from a overseas supplier in Myanmar and had filed the above three mentioned Bill of Entries for assessment and for clearing the imported consignments.

10. It is submitted that the total value of the import consignment is Rs.4,33,90,500/-. It is submitted that originally the petitioner had self assessed the consignment and had agreed to pay customs duty on the imported value of Rs.4,33,90,500/- .

11. However, the officers of the first and second respondents within whose jurisdiction the imports, drew the samples of the consignments in order to assess the imported consignment to provisionally assess the Bills of Entry under Section 18(1) (b) of the Customs Act, 1962.

<https://www.mhc.tn.gov.in/judis>

12. It is therefore submitted that the petitioner executed a test bond on 12.10.2021 for a sum of Rs.4,35,90,500/- being the value of the consignment covered by the three Bills of Entries. It is submitted that though the petitioner executed the test bond for the aforesaid value, the goods have not been released purportedly on account of the instructions of the office of the third respondent herein.

13. It is further submitted that the third and fourth respondents officers have stalled both the assessment and the clearance of the imported goods even though the proper officers had commenced the assessment of the three Bills of Entries under Chapter V of the Customs Act, 1962.

14. It is further submitted that the fourth respondent has sent an E-Mail communication dated 14.10.2021 and had directed the petitioner to be present for cargo examination either personally or through an authorized representative at Balmer Lawrie CFS, Chennai, where goods are still lying after their initial import and are pending assessment and <https://www.mhc.tn.gov.in/judis> clearance.

15. It is further submitted that though the bills of entry were filed on 22.09.2021 and 29.09.2021, the respondents are refusing to release the consignment and are thus inflicting immense financial loss on the petitioner apart from making the import consignments to deteriorate as the imported goods are natural product and are prone to perish due to efflux of time. That apart, it is submitted that the petitioner is incurring detention charges for the container.

16. The Learned Senior Counsel for the petitioner further submits that the Central Board of Excise and Customs, Ministry of Finance (Department of Revenue) has also issued clarification in Circular No.22/2004 – Cus – dated 03.03.2004, wherein it has been clarified that in the case of classification disputes, option to clear the imported goods has to be given for provisional assessment, if the inquiries are going to take time.

17. The learned Senior Counsel for the petitioner further submits <https://www.mhc.tn.gov.in/judis> that a clearance of the consignments should not be held as the imports are prohibited or banned under law for the timing in force. It is submitted that no prosecution is also in contemplation against the petitioner.

18. It is submitted that none of the circumstances stipulated in Circular No.22/2004– Cus – dated 03.03.2004 for detaining and delaying clearance are attracted in the present case. On the other hand, it is submitted that a circular mandates sample to be drawn and that the imported consignment should be allowed to be cleared on provisional assessment as a matter of course.

19. The learned Senior Counsel for the Petitioner further submits that the above Circular has been issued to prevent congestion at the ports and warehouses. He further submits that the petitioner is willing to execute additional security in the form of bank guarantee to safeguard the interest of the revenue including possible fine and penalty.

20. The learned Senior Counsel for the Petitioner submitted that the intrusion by the third and the fourth respondents from Maharashtra <https://www.mhc.tn.gov.in/judis> for consignment imported through Chennai Port is both surprising and un-warranted as the third and fourth respondents have their counter parts in Chennai to investigate and in any event the “Proper Officers” for the purpose assessment of the Bills of Entries are seized of the matter. It is submitted that the intrusion by these respondents are motivated and can neither be allowed to be continued nor condoned.

21. It is submitted that when jurisdictional proper officer within the meaning of Section 2 (34) of the Customs Act, 1962 are seized of the assessment of the respective Bills of Entries under Sections 16,17,18 of the Customs Act,1962, the intrusion by the third and the fourth respondents from Nagpur, Maharashtra was wholly without jurisdiction.

22. The learned Senior counsel for the petitioner further submits that the third and fourth respondents are not the “proper officer” for the purpose of Section 2(34) of the Customs Act 1962 under the Notification No.40/2012-Cus (N.T) dated 02.05.2012. It is submitted that as far as assessment is concerned only first and second are competent persons under the above notification.

<https://www.mhc.tn.gov.in/judis>

23. The learned Senior Counsel for the Petitioner further submits that the imported goods are neither prohibited nor restricted items and therefore the delay in the assessment and imports clearance of the imported consignment covered by three bills of entries cannot be justified.

24. It is further submitted that the imported Arecanuts viz., unflavoured supari (Betelnut products) are perishable in nature and therefore no useful purpose will be served by allowing the respondents to detain the imported consignment at the container Freight Station of Balmer Lawrie CFS, Chennai from 22 nd and 29th September 2021 after their import.

25. The learned Senior Counsel for the petitioner further submits that the imported consignments are attracting detention charges for the containers in which they were imported due to the delay.

26. The Learned Senior Counsel for the petitioner further has drawn attention to the decision of the Hon'ble Supreme Court in recently <https://www.mhc.tn.gov.in/judis> rendered in the case of Canon India Private Limited Vs. Commissioner of Customs 2021 (376) ELT 3 (SC) where the decision of the Commissioner of Customs Vs. Sayed Ali and another [2011 3 SCC 537 = 2011 (265) E.L.T. 17 (S.C.)] has been followed.

27. The Learned Senior Counsel for the petitioner has also drawn attention to Para:18 to 31 of the aforesaid judgment. He submits that the appeals filed by the department in the case of Commissioner of Customs, Kandla Vs. M/s Agarwal Metals and Alloys in Civil Appeal No.3411 of 2020 under similar circumstances was also dismissed vide order dated 31.08.2021 by the Hon'ble Supreme Court.

28. The Learned Senior Counsel also drew attention to the decision of this Court rendered in the case of Global Metro Vs. The Commissioner of Customs and others in W.P.No.12454 of 2021 on 14.07.2021, relating the import of Black Pepper from Sri Lanka. In this connection, a reference was made to Para:13 from the said order which reads asunder:-

<https://www.mhc.tn.gov.in/judis> “13. The commodity in question is agricultural produce. The variety of black pepper imported is stated to be specific to the region of Srilanka, an important ingredient in the making of spices used in Indian cuisine, with a short shelf life. Assuming for the sake of argument that investigation is concluded in favour of the petitioner, if the provisional release is not granted, the entire consignments would have been compromised. The balance of convenience would thus require, in my considered view, that the consignments be released, subject to the petitioner being put to terms. This would also ensure that the interests of the

Department are securely protected. The petitioner will remit the entire duty and furnish bond to the satisfaction of the Assessing Authority in regard to interest payable, penalty or charges that may be deemed necessary.”

29. As far as classification of the products are concerned, the learned Senior Counsel for the petitioner has drawn attention to the following orders of the Authority for Advance Rulings in Isha Exim Mumbai, vide order dated 31.03.2017 in AAR/44/CUS/02/2017 and in the case of M/s. Excellent Betelnut AAR/CUS/08/2015.

30. The learned Senior Counsel for the petitioner further submits that imported items fall under entry tariff at under Heading 2106, Sub Heading 2106 90 30 of the Customs Tariff Act, 1975 and it is a matter of adjudication by the Jurisdictional Assessing Officer whether the imported consignment merit classification under any other Heading and Sub <https://www.mhc.tn.gov.in/judis> heading under Customs Tariff Act, 1975.

31. It is therefore submitted that if there is a doubt, the imported goods has to be assessed provisionally under Section 18 of the Customs Act, 1962 and released.

32. It is submitted that the third and the fourth respondents are not the proper officers for the purpose of assessing the imported consignment. It is therefore submitted that they also cannot interfere with the assessment of the imported goods.

33. It is further submitted that the third and fourth respondents have sent the samples to Ashwamedh Engineers & Consultants, a Testing laboratory in Maharashtra to ascertain whether the imported goods namely Arecanuts (Betelnuts) satisfied the requirements of Food Safety and Standards Authority of India (FASAI) to deliberately get an adverse remark to stall the clearance of the imported consignment though there are Testing Laboratories in Chennai and third and fourth respondents have their counter parts in Chennai.

<https://www.mhc.tn.gov.in/judis>

34. Though the copies of these test reports have not been submitted to the petitioner, it is submitted that a report mentioned in the Counter Affidavit of the third and fourth respondents indicate that they were obtained by the third and fourth respondent to frustrate the import.

35. The learned Senior counsel for the petitioner also submits that in one of the report dated 11.11.2021 filed by the respondent indicates that an earlier test report given on 08.11.2021 was modified at the request of the third and fourth respondents to insert remarks[physical appearance and sample] receipt indicating that these reports were stage managed to give an impression that the imported consignment do not meet the standards to satisfy Food Safety and Standards Authority of India (FASAI). The Learned Senior Counsel for the petitioner therefore prayed for allowing the writ

petition.

36. The first and the second respondents have not filed their Counter. The learned counsel for the first and the second submits that the import is under investigation by the third and the fourth respondent and <https://www.mhc.tn.gov.in/judis> therefore the imported consignment cannot be cleared pending further investigation and any decision to issue SCN.

37. The third and fourth respondents have filed a detailed counter. Appearing on behalf of the third and fourth respondents, the Learned Senior Standing Counsel for the respondents, Mr.Sundareswaran submits that the petitioner has made a wrong declaration for self assessment under the provisions of the Customs Act,1962 as if the imported consignment were un-flavoured supari beetle nuts classified under heading 2106 and Sub heading 2106 90 30 of the Customs Tariff Act, 1975 when indeed the import consignment fall under Heading 0802 of the Customs Tariff Act, 1975.

38. It is further submitted that the samples of the imported goods were drawn and sent for testing. The learned counsel submits that the import consignment of betel nut is a prohibited goods in terms of Ministry of Commerce and Industry, Department of Commerce Notification No.20/2015-20 dated 25.07.2018 issued under Section 3 of the Foreign Trade [Development and Regulation Act] 1992. <https://www.mhc.tn.gov.in/judis>

39. It is submitted that the Ministry of Commerce and Industry, Department of Commerce, New Delhi's issued Notification No.20/2015- 20 dated 25.07.2018 to safeguard the interests of Indian Farmers who also produce Areca Nuts. It is submitted that the petitioner has imported 'split' Areca Nuts under * heading 0802 80 20 of CTA by mis-declaring it as "UnflavouredSupari(Betel Nut Product) by classifying it under 2106 90 30 of CTA.

40. The learned counsel for the respondents further submits that as per the Ministry of Finance Department of Revenue CTH 08028010/20/30/90 Notification No.74/2021 dated 16.09.2021, the imports of Areca Nuts below CIF value of Rs.251/- is prohibited falling under Chapter Heading 0802 of the Customs Tariff Act, 1975 were prohibited.

41. It is further submitted that the product neither satisfies the requirements of Chapter 21 of Customs Tariff Act, 1975 in particular <https://www.mhc.tn.gov.in/judis> heading 2106 and Sub-heading 2106 90 30 nor meets the standard prescribed under the Food Safety and standard Act, 2006.

42. It is submitted that the import value of the consignment in question has been declared to be Rs.100.44 per kilogram and thus the petitioner is prohibited from importing the imported consignment within meaning of Section 2 [33] of the Customs Act 1962.

43. It is further submitted that the Customs Duty on Areca Nuts under Chapter Heading – 08 is 100%. This measure had been taken by the Government of India in order to safe guard the interests of Indian farmers who grow Areca Nuts.

44. It is submitted that the petitioner has imported consignments of Areca Nuts (Betel nut) under Chapter Heading 0802 of the Customs Tariff Act, 1975 Customs Tariff Act but has deliberately classified under CTH 2106 90 30 to circumvent the prohibition under the Commerce Ministry's notification referred to supra. <https://www.mhc.tn.gov.in/judis>

45. That apart it is submitted that the petitioner has also undervalued the value of the imported consignments falling under Sub Heading 080280 by adopting a wrong classification under CTH 2106 90 30 to overcome the prohibition under the above Notification.

46. It is submitted that the value declared in the three Bills of Entry declared is USD 1350, whereas during the period of import of Betel Nuts imported, as per Tariff Rate for Chapter amended time to time, the per metric ton of Betel Nuts stands at 5149 USD.

47. It is submitted that since the test under Food Safety and Standards Authority of India (FSAI) have confirmed that the imported consignment are not fit for human consumption, the writ petition filed for release of the import consignment may be dismissed by allowing the 3rd and 4th respondents to complete the investigation.

48. The learned counsel for the respondent further submits that ten out of sixteen consignment have been found to be unfit for human consumption and therefore the respondents in any event are justified in detaining the imported goods. <https://www.mhc.tn.gov.in/judis>

49. The learned counsel for the respondents submits that the imported goods will be seized under Section 110 Customs Act, 1962 and appropriate notice will be issued in due course of time and the issue will have to be eventually adjudicated as to whether the petitioner was entitled to clear imported goods or whether the imported goods are liable to be confiscated under Section 111 of the Customs Act reads under Section 124,121 of 1962.

50. The learned counsel for the respondents submits that while dealing with an identical issues regarding classification of Betel Nuts in Ayush Business Overseas Limited Vs. Commissioner of Customs Chennai, the Customs Excise Service Tax Appellate Tribunal, Chennai (CESTAT) had accepted the contention of the respondent by holding that the imported consignments were to be classified under heading 0802 of the Customs Tariff Act and that further appeal filed before the Supreme Court in Ayush Business Overseas, ST Enterprises and others Vs. <https://www.mhc.tn.gov.in/judis> Business Civil Appeals Nos.850 and 851 of 2021 was dismissed by the Hon'ble Supreme Court vide order dated 19.03.2021.

51. The learned Senior Counsel for the petitioner by way of rejoinder drew attention to a decision of a Division Bench of this Court rendered in the case of W.A.No.2906 of 2019 vide order dated 20.12.2015 wherein the imported consignment of Betel Nut were allowed to be cleared subject to a following directions:-

“ i. The goods in question to be released to the assessee shall be released forthwith by the Respondent Customs Department as undertaken by the Officials of Department

present in Court. The Petitioner undertakes that before selling the goods in question in Indian market, they will again seek a fresh "No Objection Certificate" or clearance from the Food Safety and Standards Authority of India (FSSAI). The Affidavit of Petitioner to this effect may be filed in this Court, within a period of one week;

ii. On the other hand, to the extent the Petitioner intends to re-export the goods, as according to the Petitioner, such goods had failed to clear the Food Safety and Standards even initially at the time of import itself, the learned Additional Solicitor General Mr.G.Rajagopalan, undertakes to permit the Petitioner to re-export those goods back to the Sri Lankan dealers, subject to the condition that the Petitioner gives a fresh Bond, so that in case any penalty is imposed on the Petitioner, in respect of those re-exported goods, then on the basis of that Bond, the Department may recover the <https://www.mhc.tn.gov.in/judis> same from the Petitioner.

iii. The learned counsel for the Respondent, Additional Solicitor General, on further instructions from Mr.R.Vasudevan, I.R.S., Assistant Commissioner of Customs, who is present in court, submitted that before release of the goods in favour of the petitioner, the re- export of the goods as indicated in Paragraphs (i) and

(ii) above, the Departmental Authorities may be permitted to take samples, to the extent of One K.G. from each of the consignment in question, the learned Counsel for the Petitioner upon instructions submitted that the Petitioner has no objection to that and therefore, subject to the aforesaid taking of the samples, the aforesaid compliances may be made by both parties immediately and report to that effect may be furnished in this Court.

iv. The Adjudication Proceedings in pursuance of the impugned Show Cause notice may continue and the same shall remain subject to the final decision of the present writ appeal”.

52. Heard the learned Senior counsel for the petitioner and the learned Standing Counsel for the first and second respondents and learned Senior Standing Counsel for the third respondent.

53. I have perused the decision of the Hon'ble Supreme Court in Canon India Pvt.Ltd. vs. Commissioner of Customs,2021(376) E.L.T.3 (S.C.).The said decision dealt with a situation where assessment <https://www.mhc.tn.gov.in/judis> was completed and the benefit of exemption notification No.15/2012 dated 17.03.2012 as amended was denied to the importer and as a result of which the imported goods were subjected to duty and interest and penalty was imposed under the various sections of the Customs Act, 1962. The Tribunal also upheld the order of the lower authority.

54. The question that fell for consideration before the Hon'ble Supreme Court was whether the Director of Revenue Intelligence like the third and fourth respondents herein had Authority in law to issue a Show Cause Notice under Section 28(4) of the Customs Act, 1962 for recovery of duties not paid or erroneously refunded by reason of collusion or any wilful misstatement or suppression of facts and confers the power of recovery on the “Proper Officer”.

55. The Hon'ble Supreme Court observed that Additional Director General of DRI was not a "Proper Officer" to exercise the power under Section 28(4) of the Customs Act, 1962 and the initiation of the recovery proceedings was held without jurisdiction and liable to be set aside. The Court observed as under :

<https://www.mhc.tn.gov.in/judis>

21. If it was indeed that officers of the Directorate of Revenue Intelligence who are officers of Central Government should be entrusted with functions of the Customs officers, it was imperative that the Central Government should have done so in exercise of its power under Section 6 of the Act. The reason why such a power is conferred on the Central Government is obvious and that is because the Central Government is the authority which appoints both the officers of the Directorate of Revenue Intelligence which is set up under the Notification dated 04.12.1957 issued by the Ministry of Finance and Customs officers who, till 11.5.2002, were appointed by the Central Government. The notification which purports to entrust functions as proper officer under the Customs Act has been issued by the Central Board of Excise and Customs in exercise of non-existing power under Section 2(34) of the Customs Act. The notification is obviously invalid having been issued by an authority which had no power to do so in purported exercise of powers under a section which does not confer any such power

22. In the above context, it would be useful to refer to the decision of this Court in the case of Commissioner of Customs v. Sayed Ali wherein the proper officer in respect of the jurisdictional area was considered. The consideration made is as hereunder:—
"16. It was submitted that in the instant case, the import manifest and the bill of entry were filed before the Additional Collector of Customs (Imports), Mumbai; the bill of entry was duly assessed, and the benefit of the exemption was extended, subject to execution of a bond by the importer which was duly executed undertaking the obligation of export. The learned counsel argued that the function of the preventive staff is confined to goods which are not manifested as in respect of <https://www.mhc.tn.gov.in/judis> manifested goods, where the bills of entry are to be filed, the entire function of assessment, clearance, etc. is carried out by the appraising officers functioning under the Commissioner of Customs (Imports).

17. Before advertent to the rival submissions, it would be expedient to survey the relevant provisions of the Act. Section 28 of the Act, which is relevant for our purpose, provides for issue of notice for payment of duty that has not been paid, or has been short-levied or erroneously refunded, and provides that:

"28. Notice for payment of duties, interest, etc.-(1) When any duty has not been levied or has been short-levied or erroneously refunded, or when any interest payable has not been paid, part paid or erroneously refunded, the proper officer may,-

(i) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, within one year;

(ii) in any other case, within six months, from the relevant date, serve notice on the person chargeable with the duty or interest which has not been levied or charged or which has been so short-levied or part paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that where any duty has not been levied or has been short-levied or the interest has not been charged or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, the provisions of this sub-section shall have effect as if for the words 'one year' and 'six months', the words 'five years' were substituted."

18. It is plain from the provision that the 'proper officer' being subjectively satisfied on the basis of the material that <https://www.mhc.tn.gov.in/judis> may be with him that customs duty has not been levied or short levied or erroneously refunded on an import made by any individual for his personal use or by the Government or by any educational, research or charitable institution or hospital, within one year and in all other cases within six months from the relevant date, may cause service of notice on the person chargeable, requiring him to show cause why he should not pay the amount specified in the notice. It is evident that the notice under the said provision has to be issued by the 'proper officer'.

19. Section 2(34) of the Act defines a 'proper officer', thus:

'Definitions.- 2. (34) 'proper officer', in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Commissioner of Customs;' It is clear from a mere look at the provision that only such officers of customs who have been assigned specific functions would be 'proper officers' in terms of Section 2(34) the Act. Specific entrustment of function by either the Board or the Commissioner of Customs is therefore, the governing test to determine whether an 'officer of customs' is the 'proper officer'.

20. From a conjoint reading of Sections 2(34) and 28 of the Act, it is manifest that only such a Customs Officer who has been assigned the specific functions of assessment and reassessment of duty in the jurisdictional area where the import concerned has been affected, by either the Board or the Commissioner of Customs, in terms of Section 2(34) of the Act is competent to issue notice under section 28 of the Act. Any other reading of Section 28 would render the provisions of Section 2(34) of the Act otiose inasmuch as the test contemplated under Section 2(34) of the Act is

that of specific conferment of such functions.”

23. We, therefore, hold that the entire proceeding in the present case initiated by the Additional Director General of the DRI by issuing show cause notices in all the matters before us are invalid without any authority of law and liable to be set-

<https://www.mhc.tn.gov.in/judis> aside and the ensuing demands are also set-aside. Limitation

24. It is strictly not necessary to decide the question on limitation but we intend to do so since parties have elaborately relied on disclosures made before the Customs officer on that issue. The show cause notice was issued on 19.8.2014. Under Section 28(4), such a show cause notice must be issued within five years from the relevant date which means the date on which the goods were assessed and cleared, in case the duty was not paid or short paid or erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts. It is, therefore, necessary for us to examine whether there is suppression of facts.

25. The case was presented for scrutiny of the Customs officers on 20.3.2012 along with the Bill of Entry and literature consisting of specifications of the cameras.

26. The Bill of Entry made a statement that these are Digital Still Image Video Camera packed for retail sale (COOLPIX S4300, S2600 etc.). This was supported by literature which clearly stated that “... the single maximum recording time for a single movie is 29 minutes, even when there is sufficient free space on the memory card for longer recording”. This meant that even if the camera could record more than 29 minutes when it had sufficient free space (which depends on the capacity of the card providing extended memory) the maximum time for which it could record a single sequence was 29 minutes.

27. In other words, the camera could record more than one single sequence but not 30 minutes and more in a single sequence. It is obvious that the Deputy <https://www.mhc.tn.gov.in/judis> Commissioner took the view that the camera complied with the requirement of exemption i.e. it could only record up to less than 30 minutes in a single sequence. At this juncture, it is not relevant to see whether the Deputy Commissioner was right or not in taking this decision to clear the goods as exempted goods. What is important is to see whether the importers made any wilful mis-statement or suppression of facts and induced the delivery of goods.

28. It is pertinent to note that the importer had asked for a first check and had shown the cameras and the cameras were offered on 20.3.2012 along with Bill of Entry and literature detailing specifications of models. The camera could have been operated to see the length of time of the single sequence and whether recording of the single sequence exhausts the total memory of the camera (including extended memory) and whether the cameras were eligible for exemption. It is difficult in such circumstances to infer that there was any wilful mis-statement of facts. In these circumstances, it must, therefore, follow that the extended period of limitation of five years was not available to any authority to re-open under Section 28(4).

29. In this view of the matter, we consider it unnecessary to answer the issue whether the cameras that were cleared on the basis that they were exempted from customs duty under Exemption Notification No. 15/2012 were in fact eligible for the exemption or not. The goods must be taken to have been validly cleared by the Customs officer.

30. We might note that cameras with similar specifications have been treated as exempted under the Explanatory Note to the Combined Nomenclature of the European communities. It is important to add that the same cameras have been considered to be <https://www.mhc.tn.gov.in/judis> eligible for exemption before 17.03.2012 and after 30.04.2015 under the exemption Notifications issued under the Customs Act read with Chapter 84 & 85 (First Schedule) of Customs Tariff Act, 1975.

31. In the result, these appeals are allowed. The common order dated 19.12.2017 passed by the CESTAT, New Delhi in Customs Appeal Nos. 50098, 50099, 50100 and 50280/2017 is set aside.

Consequently, the impugned demand notices issued against all the three appellants herein are also set aside parties to bear their own costs”.

56. A reading of the above decision of the Hon’ble Supreme Court makes it clear that it is of no major significance to the facts of the present case.

57. The issue in the present case is whether the imported consignments of Areca nuts is to be classified under Chapter 0802 or under Sub Heading 2106 of the Customs Tariff Act, 1975 and whether for the purpose of assessment the third and the fourth respondents are “proper officers” as defined Section 2(34) of the Customs Act, 1972.

58. By notification No.40/2012-Cus (N.T.) dated 02.05.2012, the <https://www.mhc.tn.gov.in/judis> Central Government has notified persons/designation of the officer who are the “proper officer” for various function under the Act including for the purpose of assessment.

59. As far as the assessment of imported consignment is concerned, it is the Deputy Commissioner or the Assistant Commissioner of Customs and Central Excise namely, the first and the second respondents and/or the Appraiser of Customs who are competent authority albeit the “Proper Officer” to determine the correct classification.

60. This is evident from a reading of Sl.Nos.3 & 5 to the Notification No.40/2012-Cus, (N.T) dated 02.05.2012 , which read as under:-

Sl.No. Designation of the Officers Functions under Section of the Customs Act, 1962
3 Deputy Commissioner or Assistant i) Sub-section (5) of Section 17;

Commissioner of Customs and ii) Section 18; iii) Section 21;

Central Excise

iv) Section 22;
v) Section 26A;
vi) Section 28;

vii) Section 28B;
viii) Section 28BA;
ix) Section 30;

<https://www.mhc.tn.gov.in/judis>

Sl.No.	Designation of the Officers	Functions under Sect Customs Act, 1962
		x) Sub-Section (2) o Section 31; xi) Section 32; xii) Proviso to Sect xiii) Section 35; xiv) Section 42; xv) Sub-section (3) 45; xvi) Second Proviso section (1) of secti section (2) of secti xvii) Section 48; xviii) Sub-section (54; xix) Section 59; xx) Section 60; xxi) Section 61; xxii) Section 63; xxiii) Clause (f) of xxiv) Section 67; xxv) Section 72; xxvi) Section 73; xxvii) Section 80; xxviii) Section 85; xxix) Section 89; xxx) Section 97; xxxi) Sub-section (1 Section 110; xxxii) Section 129A; xxxiii) Section 129D xxxiv) Section 129E; xxxv) Section 130D; xxxvi) Section 142
5	Superintendent of Customs Central Excise or Appraiser	and i)Section 13 ; ii)Section 14; iii)Sub-sections (2) (6)of section 17; iv) Section 19;

<https://www.mhc.tn.gov.in/judis>

Sl.No.	Designation of the Officers	Functions under Section of the Customs Act, 1962
		v) Section 40;
		vi)Section 41;
		vii) Clause (b) of section 45;
		viii) Sub-sections of section 46;
		ix) Section 47;
		x) Section 50;
		xi) Section 51;
		xii) Section 54;
		xiii) Section 62;
		xiv) Clause (a) to clause 64;
		xv) Section 68;
		xvi) Section 69;
		xvii) Section 79;
		xviii) Section 83;
		xix) Section 86;
		xx) Section 92; and
		xxi) Section 93;

61. As far as the third and the fourth respondents and/or their counterparts in Chennai for Tamil Nadu are concerned, they are not “the Proper Officers” for the purpose of the assessment. Their power to issue SCN is spelt out in Sl.Nos.4 & 6 to the above notification which is reproduced below:-

Sl.No. Designation of the Officers Functions under Section of the Customs Act, 1962
4 Deputy Director or Assistant i)Section 28B; and ii) Director in the Directorate General Section 72 of Revenue Intelligence and Directorate General of Central Excise Intelligence.

<https://www.mhc.tn.gov.in/judis> Sl.No. Designation of the Officers Functions under Section of the Customs Act, 1962 6 Intelligence Officer in the i)Section 37 ;

Directorate General of Revenue ii)Section 100; Intelligence and Directorate iii)Section 103; General of Central Excise iv)Section 106;

Intelligence.

v)Section 106A;
vi)Sub-sections of Section 110;
vii) Section 144
viii) Section 14

62. Technically, even these powers cannot be exercised if one were to strictly apply the decision of the Hon'ble Supreme Court in *Cannon India Private Limited vs. Commissioner of Customs* 2021 (376) ELT 3 (SC) to the facts of the present case. The Hon'ble Supreme Court has held that, if it was intended that officers of the Directorate of Revenue Intelligence who are officers of Central Government should be entrusted with functions of the Customs officers, it was imperative that the Central Government should have done so in exercise of its power under Section 6 of the Act. The Court further observed that the reason why such a power is conferred on the Central Government is obvious and that is because the Central Government is the authority which appoints both the officers of the Directorate of Revenue Intelligence which is set up under the Notification dated 04.12.1957 issued by the Ministry of Finance and <https://www.mhc.tn.gov.in/judis> Customs officers who, till 11.5.2002, were appointed by the Central Government. The court held that the notification which purports to entrust functions to a "proper officer" under the Customs Act has been issued by the Central Board of Excise and Customs in exercise of non-existing power under Section 2 (34) of the Customs Act. The Court further held that the notification is obviously invalid having been issued by an authority which had no power to do so in purported exercise of powers under a section which does not confer any such power.

63. However, it should be noted that Section 6 of the Customs Act, 1962 deals with Entrustment of functions of Board and Customs Officers on certain other officers from other departments including the one from the State Governments.

64. Under Section 6 of the Customs Act, 1962 the Central Government may, by notification in the Official Gazette, may entrust either conditionally or unconditionally to any officer of the Central or the State Government or a local authority any functions of the Board or any officer of Customs under the Act.

<https://www.mhc.tn.gov.in/judis>

65. At this however, I would refrain from giving any opinion on one way or the other for the present as to whether the officers of the DRI namely the third and fourth respondent can be divested of all the powers and function in terms of the Notification based on the above decision of the Hon'ble Supreme Court in *Canon India Pvt.Ltd. vs. Commissioner of Customs*, 2021(376) E.L.T.3 (S.C.) as this is not the occasion.

66. It should also be underlined that the officer's of DRI represents an elite wing of the investigative officers from the Revenue Department drawn from experienced senior Customs and Central Excise Officers. It consists of Senior officers who are tasked with the duty to safeguard economic interests of the Country.

67. It will be useful to refer to the history of DRI from their own Website which extracted as under:

"The Central Excise and Customs administration, which was previously deployed during the British Rule mainly for the collection of revenue, was called upon, in the wake of independence, to shoulder the responsibility of guarding the tariff wall along

the country's vast coastline and land frontiers. Many handicaps such as <https://www.mhc.tn.gov.in/judis> want of trained manpower and adequate resources in the form of equipments and absence of precise intelligence made our frontiers more vulnerable to economic exploitation. Added to it was the temptation to evade taxes and controls which was fuelled on account of growing demand for foreign articles which otherwise were subject to high taxation rates and non-tariff barriers on account of the need to foster indigenous industry and to conserve the country's fast dwindling foreign exchange reserves.

A need was felt to have a centralized agency in India to deal with cases of violations of Customs laws, having ramifications beyond the geographical jurisdiction of localized field formations and for collection, co- ordination and correlation of intelligence with respect to violation of these laws and also to furnish specialized know-how. A beginning was made in 1953, when a nucleus cell, christened 'C.R.I.B.' (Central Revenue Intelligence Bureau), charged with the responsibility of dealing with all matters connected with anti-smuggling and anti-corruption in the Customs and Central Excise organizations all over India was constituted. It was a small unit consisting of an Assistant Collector and two Superintendents within the Directorate of Inspection (Customs and Central Excise), New Delhi but working directly under the Central Board of Revenue.

By its very composition, a cell like C.R.I.B., could have a very limited scope for wider activities. But various studies undertaken in this small Cell itself revealed that the menace of smuggling had established deep roots in India, which, in turn, spelt out the dire need for establishing a well-organized Central anti-smuggling Organization for planning and directing the anti- smuggling efforts of the various Custom Houses and Central Excise Collectorates throughout India in a scientific manner for successfully meeting the menace of organized smuggling.

<https://www.mhc.tn.gov.in/judis> Various studies were undertaken by C.R.I.B. and suggestions were submitted to the Government of India in the Ministry of Finance (Revenue Division) The proposals made by Chairman, Central Board of Revenue and Finance Secretary dealing with the re- organization of Central Revenue Intelligence Bureau and creation of the Directorate of Revenue Intelligence makes for an interesting reading as it provides an insight into the history of, rationale behind and expectations from DRI. The Chairman noted that "Till about 1955, the officers of the CRIB undertook adhoc investigations or enquiries, at the instance of the Board, and these were mostly enquiries against senior officers accused of corruption. The Bureau could not devote its attention to anti-smuggling measures on any organized pattern until after the taking over of anti- corruption work by the Vigilance wing, and the availability of its full complement of officers about a year ago. In this year, under the personal guidance of Member (Central Excise) the Bureau took up co- ordination of Inter-Collectorate work against smuggling and helped the Collectorates with experienced personnel in the investigation of major cases. Amongst the more

important cases developed wholly or partly with the help of officers of CRIB may be mentioned those of Soirat and Webb who were caught while attempting to export Rs. 2.5 Lakhs in currency, Dana and Frey who attempted to export about Rs. 9 Lakhs in currency through Attari and the un-earthing of the smuggling racket at Jamnagar headed by Talab Haji Hussain and seizure of gold valued at at over Rs. 30 Lakhs, currency of 8 lakhs of rupees and about 25 vehicles including motor cars, auto rikshaws etc. and the current investigation into the seizure of Rs. 1.5 Crores worth of diamonds from Shri Zainal Ali Raza of Bombay. In particular, the mopping up of the smugglers on such a large scale at Jamnagar has virtually broken <https://www.mhc.tn.gov.in/judis> up a powerful and organized gang, whose activities introduced about six to eight crores of rupees worth of gold every year into the country and export of currency or other goods and services of equivalent value out of it."

The Finance Secretary noted as below: -

"The essential features of the proposed organization are:

It is designed to collect and collate information and to strike swiftly;

It is officer-intensive and the ministerial staff has been kept at a minimum;

Although small, it is a high-powered organization so that it can issue instructions to Collectors and can command the confidence and respect of the other State and Central organizations with which it has necessarily to deal in order to become effective;

It will consist of selected officers, that is, those who by temperament and experience, are equipped to do this specialized kind of work;

It will have no routine job of its own in the sense that it is required to collect a certain amount of revenue. It will have complete liberty to act on 'hunches' and only the ends will justify the means it adopts."

68. Thus, the Directorate of Revenue Intelligence was thus constituted on 4th December 1957, for dealing exclusively with the work relating to the collection and study of information on smuggling <https://www.mhc.tn.gov.in/judis> activities and the deployment of all anti-smuggling resources at the all India level, besides arranging training for the intelligence and Investigation officers of the Custom Houses and Central Excise Collectorates deployed on similar work."

69. Their false is limited to pass on intelligence to the field formations and stop leakage of the revenue.

70. If the Import or Export is to be prohibited under the Customs Act, 1962, there has to be a corresponding notification of the Central Government under Section 11 of the above Customs Act, 1962. The Central Government may by a Notification prohibit either absolutely or subject to such conditions (to be fulfilled before or after clearance) import of goods. Section 11 of the Customs Act, 1962 reads as under:

11. Power to prohibit importation or exportation of goods (1) If the Central Government is satisfied that it is necessary so to do for any of the purposes specified in sub-section (2), it may, by notification in the Official Gazette, prohibit either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the <https://www.mhc.tn.gov.in/judis> notification, the import or export of goods of any specified description.

(2) The purposes referred to in sub-section (1) are the following:—

(a) the maintenance of the security of India;

(b) the maintenance of public order and standards of decency or morality;

(c) the prevention of smuggling;

(d) the prevention of shortage of goods of any description;

(e) the conservation of foreign exchange and the safeguarding or balance of payments;

(f) the prevention of injury to the economy of the country by the uncontrolled import or export of gold or silver;

(g) the prevention of surplus of any agricultural product or the product of fisheries;

(h) the maintenance of standards for the classification, grading or marketing of goods in international trade;

(i) the establishment of any industry;

(j) the prevention of serious injury to domestic production of goods of any description;

(k) the protection of human, animal or plant life or health;

(l) the protection of national treasures of artistic, historic or archaeological value;

(m) the conservation of exhaustible natural resources;

(n) the protection of patents, trade marks and copyrights;

(o)the prevention of deceptive practices;

(p)the carrying on of foreign trade in any goods by the State, or by a Corporation owned or controlled by the <https://www.mhc.tn.gov.in/judis> State to the exclusion, complete or partial, or citizens of India;

(q)the fulfilment of obligations under the Charter of the United Nations for the maintenance of international peace and security;

(r)the implementation of any treaty, agreements or convention with any country;

(s)the compliance of imported goods with any laws which are applicable to similar goods produced or manufactured in India;

(t)the prevention of dissemination of documents containing any matter which is likely to prejudicially affect friendly relations with any foreign State or is derogatory to national prestige;

(u)the prevention of the contravention of any law for the time being in force; and

(v)any other purpose conducive to the interests of the general public.

71. The expression “prohibited goods” is defined under Section 2(33) of the Customs Act, 1962, which reads as under.

(33) “prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported, have been complied with;

72. However, under Section 3(2) of the Foreign Trade (Development And Regulation) Act, 1992, the Central Government has power to make provisions for prohibiting, restricting or otherwise <https://www.mhc.tn.gov.in/judis> regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be or under the Order, the [import or export of goods or services and technologies.].

73. As per Section 3(3) of the same Act, all goods to which any Order under sub-section(20) to Section 3 applies shall be deemed to be goods the import or export of which has been prohibited under Section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

74. The view has also been expressed by the Hon'ble Supreme Court in the case of Union of India vs Agrocas Llp 2020 (373) E.L.T. 752 (S.C.), wherein paragraph 54 it was observed as under:

“Section 3 of the FTDR Act, as enacted, had undergone amendments by addition of proviso to sub-section (2) and by insertion of sub-section (4) vide Act 25 of 2010 with effect from 25 th August 2010. Sub-section (1) of Section 3 states that the Central Government may, by an order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports. It is a general provision which has no reference to GATT- 1994. It authorises the Central Government to publish an order in the Official Gazette for development and regulation of foreign trade, i.e., imports and <https://www.mhc.tn.gov.in/judis> exports. Sub-section (2) states that the Central Government can, by an order in the Official Gazette, make a provision for prohibiting or restricting or otherwise regulating, in all or specified cases and subject to such exceptions, if any, the import or export of goods and after the amendment vide Act 25 of 2010, services or technology. Sub-section (2) to Section 3, therefore, authorises the Central Government to, by an order published in the Official Gazette, make provisions restricting the imports or exports. Imposition of quantitative restrictions on imports or exports would clearly fall within sub-section (2) to Section 3 of the FTDR Act. We are not concerned with the proviso to sub-section(2) in the present case. Sub-section (3) to Section 3 states that where an order is passed under sub-section (2) whereby the import or export of goods is prohibited, restricted or otherwise regulated, the goods in question would be deemed to be prohibited goods under Section 11 of the Customs Act, 1962 and accordingly the provisions of the latter Act would apply.”

75. There is a prohibition of goods falling under Heading 0802 of Customs Tariff Act, 1975, if the value is below vide Notification No. No.20/2015-2020 dated 25.07.2018 of the Ministry of Commerce and Industry, Department of Commerce, New Delhi, if the value is below a specified value. Thus, under Notification No.20/2015-2020 dated 25.07.2018 of the Ministry of Commerce and Industry import of goods falling under 0802 of the Customs Tariff Act, 1975 is deemed to have been prohibited under a Notification issued under Section 11 of the <https://www.mhc.tn.gov.in/judis> Customs Act, 1962.

76. However, it should be emphasized that it is no part of the duty or function of the third and fourth respondents and their counterparts in Chennai to stall an assessment proceeding by a “proper officer” designated under the Customs Act and the Notification No.40/2012-

Cus(NT) dated 2.5.2012.

77. In Union of India and Others Versus Raj Grow Impex LLP and Others 2021 SCC OnLine SC 429, the Hon’ble Supreme Court has reiterated that if the goods are “prohibited,” option to redeem the goods under Section 125 cannot be given. It will be useful to refer to para 157, 158 and 159 from the said judgment of the Hon’ble Supreme Court which reads as under:-

157. Once it is clear that the goods in question are improperly imported and fall in the category of ‘prohibited goods’, the provisions contained in Chapter XIV of the Customs Act, 1962 come into operation and the subject goods are liable to confiscation apart from other consequences. Having regard to the contentions urged and the background features of these appeals, the root question is as to how the goods in question are to be dealt with under Section 125 of the Customs Act? The relevant part of Section 125 of the Customs Act reads as under:

— Section 125(1) of the Customs Act, 1962 “125. Option to pay fine in lieu of confiscation.—(1) <https://www.mhc.tn.gov.in/judis> Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

xxxxxxxxx”

158. A bare reading of the provision aforesaid makes it evident that a clear distinction is made between ‘prohibited goods’ and ‘other goods’. As has rightly been pointed out, the latter part of Section 125 obligates the release of confiscated goods (i.e., other than prohibited goods) against redemption fine but, the earlier part of this provision makes no such compulsion as regards the prohibited goods; and it is left to the discretion of the Adjudicating Authority that it may give an option for payment of fine in lieu of confiscation. It is innate in this provision that if the Adjudicating Authority does not choose to give such an option, the result would be of absolute confiscation. The Adjudicating Authority in the present matters had given such an option of payment of fine in lieu of confiscation with imposition of penalty whereas the Appellate Authority has found faults in such exercise of discretion and has ordered absolute confiscation with enhancement of the amount of penalty. This takes us to the principles to be applied for exercise of the discretion so available in the first part of Section 125(1) of the Customs Act.

159. The principles relating to the exercise of discretion by an authority are expounded in various decisions cited by the parties. We may take note of the relevant expositions as <https://www.mhc.tn.gov.in/judis> follows:

78. Thus, there has to be a proper determination as to whether there is prohibition of the imported goods. This exercise can be carried only by a “Proper Officer” and cannot be usurped by the third or fourth respondents or their counter parts in Chennai.

79. It should be emphasized that it is no part of the duty or function of the third and fourth respondents and their counterparts in Chennai to stall an assessment proceeding by a “proper

officer” designated under the Customs Act and the Notification No.40/2012- Cus(NT) dated 02.5.2012.

80. Merely because the officers of the third and the fourth respondents have powers to investigate by itself means will not mean that they can insist on a “hands off approach” by a competent officer who have been given the powers to assess Bill of Entry filed by an importer. Even if the jurisdictional officer of the DRI from Chennai i.e., the counter parts of the third and the fourth respondents felt that the import was <https://www.mhc.tn.gov.in/judis> without proper licence and that there was an attempt to import prohibited goods, it is their duty to merely inform the assessing officers namely The Additional Commissioner of Customs, The Assistant Commissioner of Customs, Superintendent of Central Excise and Customs or the appraiser of customs who are the “assessing officer’s “ to make proper assessment to safeguard the interest of the Revenue.

81. Thus, the exercise carried out hitherto, by the third and the fourth respondents at the stage of assessment of the Customs Duty is partly necessary, partly unnecessary and partly without the jurisdiction. It was their duty only to tip off the instructions to the jurisdictional “proper officer” who have to assess the Bills of Entry filed by the petitioner.

82. It is for the “Proper Officer” as defined in Section 2(34) of Section 2 of the Customs Act, 1962 r/w Notification No.40/2012- Cus,(N.T.) dated 02.5.2012 to determine the classification and assessee the imported goods.

<https://www.mhc.tn.gov.in/judis>

83. If the Proper Officer is of the view that the goods fall under Heading 0802 of the Customs Tariff Act, 1975 and there is a misdeclaration by the petitioner by disguising the classification in the respective Bills of Entries under Heading 2106 of the Customs Tariff Act, 1975, a quick decision should be taken and proceed in accordance with law.

84. A “proper officer” can also initiate proceeding under Section 111(d) read with Section 124 of the Customs Act, 1962 to confiscate the consignment and impose penalty under Section 112 of the Custom Act, 1962.

85. It is for the first and the second respondents or the Appraiser of Customs or the Appraiser of Customs or Superintendent of Central Excise and Customs to assess the imported consignments and come to an independent conclusion, as to whether the imported goods i.e. Areca nuts merits to be classified under Chapter 0802 or under Sub Heading 2106 of the Customs Tariff Act, 1975 or is whether the import is prohibited. <https://www.mhc.tn.gov.in/judis>

86. As far as the third and the fourth respondents are concerned, they have no jurisdiction to impede in the imports. If any attempt is noticed on the part of the petitioner to wrongly import the goods into the country, contrary to the notifications of the of the Commerce Ministry prohibiting the import, it is for the third and the fourth respondents or their Counterparts in Chennai to pass on the intelligence to the “Proper Officer” who are the proper officer for the assessment of the Bills of

Entry.

87. It is only the jurisdictional proper officer's namely, the first and second respondent or the Appraiser (customs) within the meaning of Notification No.40/2012-Cus,(N.T) dated 02.05.2012 who are empowered to complete the assessment whether finally or provisionally. They should therefore complete such assessment within a period of 15 days from the date of receipt of a copy of this order.

88. On the other hand, if the Proper Officer is of the view that there is dispute is only regarding valuation and not classification, imported goods should be released after completing the assessment <https://www.mhc.tn.gov.in/judis> provisionally under Section 18 of the Customs Act, 1962 within 15 days as noted above.

89. In case of alleged mis-declaration, if the 3rd and 4th respondent's through their counterpart in Chennai exercise powers vested with them under the above notification in Sl.Nos.3 and 4, such exercise will be subject to interpretation and judicial pronouncements to be made in the light of the decision of the Hon'ble Supreme Court in Cannon India Ltd. case.

90. Suffice to state, at this stage, the "proper officer" who have been given the task to assess the Bill of Entry which involves both classification and valuation and determination as to whether the import of the goods is prohibited should be allowed to pass appropriate Order under the Custom Act, 1962. Such Officers can rely on the information which may be passed on by the third and fourth respondents or their counter parts in Chennai while assessing the goods.

91. Since the imported goods are natural products and are prone to deterioration due to exposure to elements and natural causes with <https://www.mhc.tn.gov.in/judis> efflux of time and humid & inclement weather condition in Chennai and are lying at Balmer Lawrie CFS, Chennai since the end of September, 2021 the 1st and the 2nd respondents and/or such other officers vested with the powers to assess the Bills of Entries are directed to exercise their powers under the Customs Act, 1962 one way or the other.

92. The initial exercise regarding the determination of classification may be completed within 15 days from the date of hosting of this Order in the website. In case, the "proper officer" is of the prima facie view that the goods are liable for confiscation, seizure order may be issued followed by confiscating the imported goods if they are found to be prohibited in terms of the Notification of the Commerce Ministry. If not, the imported goods can be allowed to be redeemed. This should be decided within a period of 30 days thereafter. The proper officer shall bring a closure to the issue one way or the other within a period 30 days thereafter after duly following the safe guards under the Customs Act,1962 and principle of natural justice. The petitioner may be given an option to re-export the imported goods if they are held to be prohibited goods to mitigate the loss of the petitioner. This observation <https://www.mhc.tn.gov.in/judis> is without prejudice to any penalty that may be imposed if the circumstances so warrant.

93. This writ petition stands disposed with the above observations. No costs.

29.11.2021 Index: Yes/ No Internet : Yes/No Speaking/Non-speaking Order kkd To

1. The Commissioner of Chennai Greater Chennai Corporation Ribbon Building, Chennai - 3.
2. The Revenue Officer, Greater Chennai Corporation Ripon Building, Chennai - 600 003.
3. The Assistant Revenue Officer, Revenue Department Zone 9, Greater Chennai Corporation, No.4, Lake View Road, 4th Cross Street, Nungambakkam, Chennai - 34.
4. The Assistant Revenue Officer, Revenue Department Zone 5, Greater Chennai Corporation, No.105, Basin Bridge Road, Royapuram, Chennai – 79.

<https://www.mhc.tn.gov.in/judis> C.SARAVANAN,J.

kkd Pre-delivery Order in 29.11.2021 <https://www.mhc.tn.gov.in/judis>