

HIGH COURT OF GUJARAT (D.B.)**ALPHABET INTERNATIONAL****Versus****UNION OF INDIA****Date of Decision:** 23 March 2023**Citation:** 2023 LawSuit(Guj) 1039**Hon'ble Judges:** [N V Anjaria](#), [Niral R Mehta](#)**Case Type:** Special Civil Application**Case No:** 2094 of 2023**Subject:** Constitution, Customs**Acts Referred:**[Constitution Of India Art 226](#)[Customs Act, 1962 Sec 110](#), [Sec 111](#), [Sec 110A](#), [Sec 112](#)**Final Decision:** Petition disposed**Advocates:** [Rohan Lavkumar](#), [Kanstubh Srivastav](#), [Nanavati Associates](#), [Priyank P Lodha](#)**N.V.Anjaria, J.**

[1] In the facts and circumstances of the case and having regard to the request and consent of the learned advocates for the parties, this Special Civil Application was taken up for final consideration.

1.1 Rule returnable forthwith. Learned advocate Mr.Priyank Lodha waives service of Rule on behalf of respondents.

1.2 Heard learned advocate Mr. Rohan Lavkumar for Nanavati Associates for the petitioner.

[2] It is for seeking the following prayers as advanced in the memorandum petition that the petitioner has filed this Special Civil Application under Article 226 of the Constitution,

"(a) to direct the respondents to allow the petitioner to clear the goods imported through the two Bill of entries i.e. Bill of Entry No. 3989898 dated 31.13.2022 and Bill of Entry No. 4026695 dated 4.1.2023 filed with the office of respondent No.3;

(b) to quash and set aside the seizure memo dated 16.01.2023 issued by respondent No.4

(c) to direct the respondent No.2 and 3 their officers, employees not to initiate any actions for disposal of the goods imported through the two aforementioned bill of entries filed with office of Respondent No. 3

(d) to allow clearance of goods imported through the two aforementioned bill of entries filed with the office of Respondent No.3 with such terms and conditions as deemed fit and proper by the court."

2.1 At the time of hearing, learned advocate for the petitioner pressed the only prayer (d) above, whereby it is prayed to release the goods through the said two bills of entries upon proper terms and conditions. In other words, the prayer of the petitioner is to permit provisional release of the goods.

[3] Noticing the facts, the petitioner, a proprietorship concern, engaged in the business of import, imported the consignments of fresh Kiwi Fruits from UAE through M/s. Anchor Global Foodstuff Trading LIC, which were originally exported from Chile. The goods were imported under Bill of Entry No. 3989898 dated 31.12.2022 and Bill of Entry No. 4026695 dated 4.1.2023. The petitioner stated that it filed the necessary documents required for clearance of goods for home consumption, which are detailed in the petition.

3.1 It appears that the respondent custom authorities proceeded to exercise their powers under section 110 of the Customs Act, 1962, which deals with seizure of the goods, documents and things. As per seizure memo dated 16.1.2023, which refers to only one Bill of Entry No. 3989898 dated 31.12.2022 out of the above two, it was stated therein that amongst the documents produced, the petitioner submitted Phytosanitary certificates issued by the Chile on 12.1.2023. They were Phytosanitary Certificate No. 2178019, 2171104, 2178021 and 2166630.

3.2 It was mentioned in the seizure memo that on perusal of the documents it was found by the authorities that the very Phytosanitary Certificates were used and submitted by other importers in relation to their consignments. The names of those cosigners were also mentioned in the seizure memo which inter alia included A & A Shipping Services.

3.3 The Preventive Officer, Customs House, Mundra Port-respondent No.3 herein seized the goods 'fresh Kiwis' on the aforesaid allegation and ground. It is to be recollected that while the consignments comprised of two bills, in respect of entry No. 4026695 dated 4.1.2023, the seizure memo is silent. Be as it may.

[4] Pressing the only prayer advanced in the petition as above, learned advocate for the petitioner submitted that the goods are of perishable nature, which are lying with the authorities since the date of seizure, that is 16.1.2023 and since they are perishable in nature, they are on the verge of perishment to result into serious financial loss and also prejudice to the petitioner who has already requested the authorities to clear the goods. It was submitted that the petitioner is ready to comply with the conditions which may be imposed for the purpose of provisional release. It was next submitted that section 110A of the Customs Act, 1962 permits provisional release of goods pending the adjudication.

4.1 In addition to the above submissions, learned advocate for the petitioner relied on the decision of this Court in **M/s. A and A Shipping Services vs. Union of India being Special Civil Application No. 23784 of 2022 decided on 29.11.2022**. It was submitted that in the said case, the Court entertained the prayer for provisional release of the goods which were the very goods-fresh Kiwis Fruits and seizure of the goods in that case was on the identical ground. Learned advocate for the petitioner submitted that the same conditions may be imposed and the relief to the petitioner may be granted.

4.2 Learned advocate for the respondent on the other hand relied on the affidavit-in-reply to oppose the prayer. He raised various contentions on the basis of the contents of the affidavit-in-reply.

[5] While the court has gone through and considered the contentions raised in the affidavit-in-reply, suffice it to mention that it is not the stand of the authorities for the seizure of the goods that the goods are unfit for human consumption. On the contrary as was highlight1ed by the petitioner, the petitioner has obtained provisional 'No Objection' certificate for clearance of imported food from the Food Safety and Standards Authority of India dated 07.01.2023, report of Laboratory Analysis by accreditation or NABL laboratory dated 11.01.2023, final approval and No Objection Certificate of the Food Safety and Standards Authority of India, Quarantined Inspection and Clearance of imported plants/ plant product by the plant quarantine station dated 30.01.2023 as well as Fumigation Certificate dated 30.01.2023, which go to suggest that the goods are worthy of human consumption.

5.1 Section 110A of the Customs Act, 1962 reads as under,

"110A.- Provisional release of goods, documents and things seized or bank account provisionally attached pending adjudication- Any goods, documents or things seized or bank account provisionally attached under section 110, may, pending the order of the adjudicating authority be released to the owner or the bank account holder on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require."

5.2 Under the statutory provisions, the seizure of the goods would follow the inquiry and investigation to be further followed by adjudication process which may or may not ultimately lead to confiscation of imported goods as contemplated in section 111 of the Act. The stage of inquiry has yet not been started. It is reflected that though goods were seized on 16.1.2023, so far the petitioner is not issued show cause notice. In any case, the adjudicatory proceedings have not started.

5.3 The court finds that when the goods are perishable in nature, the authorities should act with greater swiftness to proceed with the adjudicatory mechanism and take a final decision.

5.4 As far as the prayer for provisional release of the goods are concerned, it could be considered not only on the basis of the facts obtaining, but also in view of decision of **M/s. A and A Shipping Services (supra)** as could be gathered from the contents of para 9.2 of the said decision. In that case, the seizure of the goods of very nature was based on identical allegation namely that the same Phytosanitary Certificate issued by the Chilen authorities were used for different consignments by different importers.

5.5 Para 9.2 of may be extracted from the said decision,

"On perusal of the documents submitted by the importer and it was noticed that the same Phytosanitary Certificate issued by the Chilean authorities were being used for different consignments by different importers. It is given a detail as to how the two Phytosanitary certificates issued by the Chile are mentioned in the other certificates and therefore, according to the respondent, the documents could be the forged documents showing the CountryofOrigin of Chile. Another importer M/s.Saify Enterprise also has used the said Phytosanitary certificate. They are also suspicious about the Phytosanitary certificate bearing Nos.2158830 dated 26.04.2022, 2171104 dated 17.05.2022 & 2167596 dated 11.05.2022. The vessel has reached at Mundra Port on 05.10.2022, it takes about 04 to 05 days from Jabel Ali Port, Dubai to Mundra Port. Therefore, also it has suspected the certificates."

[6] The case of the petitioner herein is further additionally comparable with the facts of the said case, as the very certificates which were subject matter of allegations in

M/s. A and A Shipping Services (supra) are the certificates mentioned in the impugned seizure memo with the allegations that they were used for shipping clearance for more than one consignments. The Division Bench considered the provisions of the Customs Act including sections 110, 110A and 112 and further relying on the decision of the Madras High Court in **Writ Appeal No. 377 of 2016 in Malabar Diamond Gallery Pvt. Ltd. vs. Additional Director, DRI Chennai & Ors.** as well as the decision of this court in **Besto Tradeling Limited vs. Principial Commissioner of Customs being Special Civil Application No. 1796 of 2022** and took the view that the authorities were required to release the goods which were of perishable in nature.

6.1 It was noted by the court that the petitioner therein had paid the tax. In that view of the matter, the Division Bench deemed it proper to impose suitable conditions of furnishing of bank guarantee, furnishing of bond and obtaining undertaking of the Manager Director as directed in para-19 of the order to permit the provisional release. The review application filed against the siad judgement came to be dismissed.

[7] The two Bills of Entries in the present case indicated that they relate to fresh Kiwi fruits of the description mentioned therein. They are perishable foods. The adjudication is pending, not yet started.

7.1 In the facts and circumstances of the case, when the petitioner has agreed to abide by the conditions which may be imposed in light of the decision of this court in **M/s. A and A Shipping Services (supra)**, which could be applied to guide the final order to be passed, this court is inclined to grant the prayer by allowing the provisional release of the goods.

7.2 As far as the conditions on which the goods may be released to the petitioner, the court leaves the said aspect to the competent authority concerned who shall prescribe the conditions on the lines of the conditions prescribed by this court in **M/s. A and A Shipping Services (supra)** exercising sound discretion in that regard and upon compliance of such conditions shall provisional release the goods.

7.3 The authorities shall permit the release of the goods as per the following directions.

(i) The petitioner shall pay the entire due tax amount, if not paid within three days.

(ii) The competent authority of the respondents shall proceed to determine the conditions to be imposed against the petitioner for the purpose of release of the goods, which may include furnishing of bank guarantee, furnishing of bond and

undertaking from the person at the helm of affairs of the company on the very lines of order passed by this Court in **M/s. A and A Shipping Services (supra)**.

(iii) the conditions regarding furnishing of bank guarantee, furnishing of bond and including payment of tax, shall be the conditions to be satisfied by the petitioner primarily as condition precedent for release of the goods.

(iv) Any other conditions such as seeking certain documents, which may be prescribed by the authorities shall be treated as subsidiary conditions, for compliance shall be ensured, which appropriate time, if required, shall be given to the petitioner. However, non-compliance of those conditions shall not be a ground not to release the goods.

(v) The entire exercise above including the release of the goods shall be within five days from the date of receipt of copy of this order.

[8] It is observed that adjudicatory process shall start and shall be completed expeditiously.

[9] It is clarified that this court has not gone into nor has expressed any thing about rival merits in case, to be finally determined by the adjudicating authorities.

[10] The petition stands disposed of in the above terms.

Direct service is permitted.