

(2016) 01 KL CK 0003

In the High Court Of Kerala

Case No : W.A. Nos. 480, 481, 482, 864, 865, 866, 867, 868, 970, 973, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1005, 1008, 1537, 1543, 1544, 1548, 1549, 1568, 1590, 1591, 1600, 1622 & 1696 of 2011

Director General of Foreign Trade

APPELLANT

Vs

Mustafa Traders

RESPONDENT

Date of Decision : 04-01-2016

Acts Referred:

Citation : (2016) 339 ELT 215 : (2016) 2 KHC 650 : (2016) 2 KLT 87

Hon'ble Judges : Ashok Bhushan, C.J. and A.M. Shaffique, J.

Bench : Division Bench

Advocate : Sri P.J. Philip, C.G.C. and Sri. N. Nagaresh, Assistant Solicitor General, for the Appellant; Sri C.K. Karunakaran and Sri P. Haridas, Advocates, Sri John Varghese, S.C, for the Respondent

Final Decision : Allowed

Judgement

A.M. Shaffique, J.—These appeals have been filed by the Director General of Foreign Trade and Union of India challenging a common judgment dated 2/11/2010 of the learned Single Judge by which the writ petitions filed by the writ petitioners were allowed on a limited ground. The challenge in the writ petitions was with reference to certain notifications issued by the Central Government. One such notification is Ext.P1 produced in WA No. 480/2011. It is a notification dated 4/6/2008 issued by the Government of India, Ministry of Commerce and Industry, Department of Commerce by which betel nuts of different specifications were permitted to be imported provided the cif value is Rs. 35 per Kilogram and above. Prior to the aforesaid notification, free import of betel nuts of different specifications was permitted. Certain other notifications were also challenged, which were dated 20/2/2007, 10/7/2007 and 29/8/2007. Those notifications relate to restriction imposed for importing betel nuts only from Mangalore Port.

2. Learned Single Judge did not go into the merits of the contentions urged, but

allowed the writ petitions on a limited ground by forming an opinion that the Director General of Foreign Trade has no jurisdiction to issue a notification under Section 5 of the Foreign Trade (Development and Regulation) Act (hereinafter referred to as "the Act"). It is argued by the learned counsel for the appellants that the Director General, Foreign Trade has issued the notification on behalf of the Central Government, which is evident from the files produced before this Court. In fact, an interim order had been passed by this Court on 22/12/2011 recording the submission of the learned counsel for the appellants that the files pertaining to the notifications were available for production before this Court. Accordingly, by letter dated 21/5/2014, learned counsel for the appellants had produced three files before this Court. A perusal of the files clearly indicates that the Director General, Foreign Trade has issued the notification based on the decision taken by the Central Government and also in the capacity of Additional Secretary to the Government and therefore, the judgment of the learned Single Judge is liable to be set aside.

3. With reference to notifications dated 20/2/2007, 10/7/2007 and 29/8/2007, it is submitted by the learned counsel for the appellants that those notifications have already been superseded by the notification dated 4/6/2008, which has later on underwent further amendments as well. Hence, we do not think that there is any necessity to consider the validity of the notifications dated 20/2/2007, 10/7/2007 and 29/8/2007. What we are concerned is only with reference to the finding of the learned Single Judge with reference to notification dated 4/6/2008.

4. The opening paragraph of the said notification indicates as under;

"S.O.(E) In exercise of powers conferred by Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 read with paragraph 2.1 of the Foreign Trade Policy 2004-09, the Central Government hereby amends Schedule-I (Imports) of the ITC (HS) Classifications of Export and Import Items, 2004-09 as under:....."

The notification is signed by the Director General of Foreign Trade and Ex-Officio Additional Secretary to the Government of India. There is clear indication in the notification that it is issued on behalf of the Central Government, signed by the DGFT and Ex-Officio Additional Secretary to the Government of India.

5. When the notification has been issued clearly indicating that it is a notification under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 read with paragraph 2.1 of the Foreign Trade Policy, 2004-09 and the power is exercised by the Central Government and when it is stated that the "Central Government hereby amends the Schedule-1" and the signature is made by the DGFT as Additional Secretary to Government of India as well, we do not think that the learned Single Judge was justified in forming an opinion that DGFT himself has issued the notification in terms of Section 5 of the Act. Further files produced in the case also indicates that the decision had been taken by the

Central Government at the Ministry level and thereafter the notification had been issued.

6. Learned counsel for the contesting respondents would further submit that the learned Single Judge had proceeded to consider the matter based on the counter affidavit filed in the case. We have gone through the counter affidavit. It is clearly indicated in the counter affidavit that the notification has been issued as per the policy of the Central Government. Merely for the reason that the DGFT also hold the post of Additional Secretary to Government of India does not mean that he cannot exercise the powers vested in him as per the Rules especially when he had issued the notification in accordance with the procedure prescribed after due approval of the concerned authority. Under such circumstances, we are of the view that the judgment of the learned Single Judge to the above extent is liable to be set aside.

7. Learned counsel for the writ petitioners would however submit that they have substantial contentions based on merits of the case especially with reference to the manner in which the notification had been issued and whether there was proper materials to issue such notification at that stage. Learned counsel appearing on behalf of the Customs authorities would submit that they have filed a counter affidavit controverting the stand taken in the writ petitions, which was not considered by the learned Single Judge.

8. Be that as it may, the entire issues which had been projected on merits have to be considered by the learned Single Judge as we are remitting the matter after setting aside the judgment of the learned Single Judge to the above extent.

9. Learned counsel for the writ petitioners seek leave to peruse the files produced before this Court. It shall be open for the learned counsel for the petitioners to request for verification of the files from the learned Single Judge.

10. In the result, these appeals are allowed. We set aside the judgment of the learned Single Judge and the matter is remitted back for further consideration in accordance with law.