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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.09.2026**Pronounced on: 24.09.2026**

CORAM

**THE HON'BLE DR.JUSTICE ANITA SUMANTH
AND
THE HON'BLE MR.JUSTICE C.KUMARAPPAN**

**WA No. 3594 of 2025
and CMP.No. 29708 of 2025**

CNR:{HCMA012865352025}



1. Union of India,
through Ministry of Finance,
Department of Revenue,
North Block, New Delhi 110001.
2. The Commissioner of Customs,
No. 60, Rajaji Salai,
Chennai-600001.
3. The Directorate of Revenue Intelligence,
Chennai Zonal Unit,
27, G.N.Chetty Road,
T.Nagar,
Chennai-600017.
4. The Intelligence Officer,
Directorate of Revenue Intelligence,
Chennai Zonal Unit,
27, G.N.Chetty Road,
T.Nagar,
Chennai-600017.
5. The Assistant Director,
Ministry of Finance,
Department of Revenue,



Directorate of Revenue Intelligence,
27, G.N.Chetty Road, T.Nagar,
Chennai-600017.

..Appellant(s)

Vs

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1. Dhanalaxmi Food Pvt, Ltd.
Having office at Kuleshwar,
Byapar Singh, Kathmandu, Nepal,
Rep.by Power Agent D.S.Hari
2. M/s.Unifeeder Agencies India Pvt. Ltd,
4thFloor, Chalam Tower,
New No.113, Old No. 62,
Dr.Radhakrishnan Salai, Mylapore,
Chennai-600004.
3. M/s.Chennai Container Terminal Pvt. Ltd.,
Chennai Ground,
Chennai Port Trust Administrative Building,
No.1, Rajaji Salai,
Chennai-600001.

..Respondent(s)

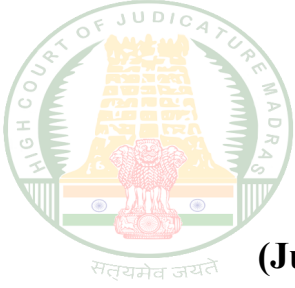
Appeal filed under Clause 15 of Letters Patent, to allow the above Writ Appeal by setting aside the impugned order dated 06.11.2025 passed in W.P.No.28538 of 2025.

For Appellant(s): Mr.Sai Srujan Tayi,
Senior Panel Counsel

For Respondent(s): Ms.Avanti Balachander, (for R1)

Ms.Ashly K.Prakash (for R2)
for M/s.Lloyd & Johnson

R3 - No Appearance.

**JUDGMENT****(Judgment of the Court was delivered by Dr.Anita Sumanth J.)**

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The appellants are the respondents in W.P.No.28538 of 2025, being the Department of Revenue, Ministry of Finance, Union of India/A1, Commissioner of Customs/A2 and authorities of Directorate of Revenue Intelligence/A3 to A5. The Writ Petitioner is R1, the Liner is R2 and the Container Terminal is R3 in this appeal. The parties are referred to as per the array in this appeal.

2. R1 is an importer of six containers of watermelon seeds that were being transhipped to Nepal, through Chennai and Kolkata Ports. The supplier is a company based in Dubai UAE and the consignments were shipped per two bills of lading bearing Nos.JEA/CCU/25/36931 and JEA/CCU/25/36963, both dated 26.05.2025. As on that date, Notification No.6/2025-26 dated 02.05.2026 was in force that imposed a prohibition on the import or transit of goods originating in or exported from Pakistan.

3. Based on intelligence that the containers contained prohibited goods per Notification No.6/2025-26, the containers were detained at Chennai Port and examined. The authorities found 4050 bags of raw unshelled watermelon seeds, out of which 300 bags contained labels indicating that the goods had originated in Pakistan. The goods were hence seized vide mahazar dated



27.06.2025 that came to be challenged by way of a Writ Petition along with summons dated 26.03.2025 issued by A3.

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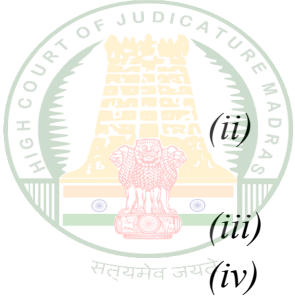
4. The Writ Petition has been allowed on 06.11.2025, learned Judge quashing both the seizure memo and summons and issuing directions to A3 to release the goods for onward transshipment. Hence this Writ Appeal by the customs authorities.

5. Mr.Sai Srujan Tayi, learned Senior Panel Counsel for the appellants argues that the impugned order has not taken note of relevant facts, has misconstrued the term 'import', in holding that there had been no import of consignment into India, had misinterpreted relevant provisions in the Customs Act, 1962 (in short 'Act'), including Sections 11 and 54, had further erred in deciding questions of fact in relation to the country of origin of consignments, holding them to be Nigeria and had, in all, erred in allowing the Writ Petition contrary to the spirit and express terms of Notification No.6/2025-26, in directing release of the goods for transshipment.

6. The appellants rely on the following judgments to buttress their submissions as aforesaid.

(i) *Union of India and another v. Mustafa & Najibai Trading Co. and others*¹

¹(1998) 6 SCC 79



- (ii) *Gramophone Company of India Ltd. v. Birendra Bahadur Pandey and others*²
- (iii) *National Legal Services Authority v. Union of India and others*³
- (iv) *Centre for Public Interest Litigation v. Union of India*⁴
- (v) *Aabis International v. C.C., Chennai Cus.-II Commissionerate*⁵
- (vi) *K.R.Ahmed Shah v. Additional Collector of Customs, Madras & Others*⁶
- (vii) *Lucas T.V.S. Padi, Madras v. Assistant Collector of Customs, Madras and Others*⁷

7. Per contra, Ms.Avanti Balachander, learned counsel for R1 and Mr.Ashly K.Prakash, learned counsel for R2 would argue that there was no error in the impugned order, having regard to the relevant provisions of the Act and the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020.

8. They argue that the Writ Court has gone into the supporting documentation concluding rightly that they are of sterling quality and unimpeachable since they have been issued by statutory authorities. Drawing attention to the Treaty for transshipment between Government of India and Government of Nepal (in short 'Treaty'), learned counsel would emphasise that the destination State, i.e, Nepal was land-locked and the purpose of the Treaty is to promote freedom of transit and international trade. The Treaty has been extended from time to time and is even now in force. Since the goods were

²(1984) 2 SCC 534

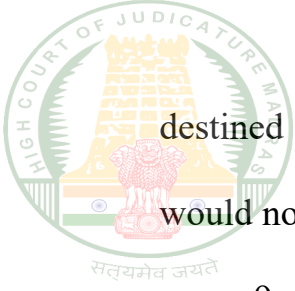
³(2014) 5 SCC 438

⁴MANU/SC/0057/2026

⁵2021 SCC OnLine Mad 17129

⁶1980 SCC OnLine Mad 401

⁷1980 SCC OnLine Mad 415



destined for Nepal, the prohibition imposed by Notification No.6/2025-26 would not be attracted.

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9. Taking us through the following judgments, learned counsel would argue that the question of import of the goods does not arise as there has been no intermingling of the subject goods with goods meant for domestic sale and hence there was no dispute that the consignments were meant only for transshipment.

- (i) *Collector of Customs, Calcutta v. Narayani Trading Concern (Pvt.) Ltd.*⁸
- (ii) *Narayani Trading Concern (Pvt.) Ltd. v. Collector of Customs*⁹
- (iii) *Padam Kumar Agarwalla v. Additional Collector of Customs*¹⁰

10. We have heard learned counsel and perused the records. The admitted facts are that 4050 bags of raw unshelled watermelon seeds weighing 1,61,490 kgs were packed in six containers under two bills of lading bearing Nos.JEA/CCU/25/36931 and JEA/CCU/25/36963, both dated 26.05.2025, and loaded on to SSL Krishna (V.086), the consignee being R1.

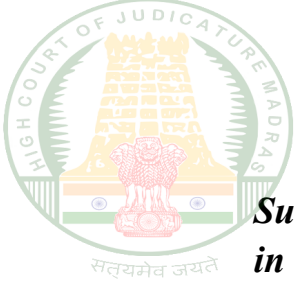
11. As on the date of bill of lading, prohibition had been imposed vide Notification No.6/2025-26 dated 02.05.2025 that reads as follows:

*Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Foreign Trade
Vanijya Bhawan*

⁸1995 SCC OnLine Cal 463

⁹1995 SCC OnLine Cal 465

¹⁰(1972) 4 SCC (N) 32



Notification No.06/2025-26

New Delhi, Dated: 2nd May 2025

Subject: Prohibition on Import or transit of all goods originating in or exported from Pakistan – Insertion of Para 2.20A of Foreign Trade Policy (FTP) 2023, - reg.

S.O.(E) In exercise of powers conferred by Section 3 read with Section 5 of Foreign Trade (Development & Regulation) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy (FTP) 2023, as amended from time to time, the Central Government hereby inserts a new Para 2.20A in Foreign Trade Policy, 2023 as follows with immediate effect:

Para 2.20A: Prohibition on Import from Pakistan

Direct or indirect Import or transit of all goods originating in or exported from Pakistan, whether or not freely importable or otherwise permitted, shall be prohibited with immediate effect, until further orders. This restriction is imposed in the interest of national security and public policy. Any exception to this prohibition shall require prior approval of the Government of India.”

Effect of the Notification: *Para 2.20A of FTP, 2023 is inserted to prohibit direct or indirect import or transit of all goods originating in or exported from Pakistan with immediate effects until further orders.*

(Ajay Bhadoo)

*Director General of Foreign Trade &
Addl. Secretary to the Government of
India*

12. The language of the Notification is clear, in that it refers to import, both direct and indirect, for the purposes of clearance and transit. Based on information that the subject consignments contained prohibited goods, the authorities detained and examined the consignments finding that out of 4050



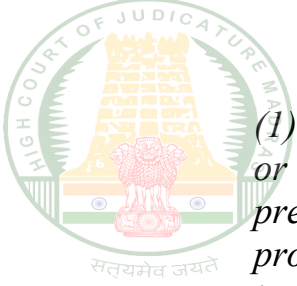
bags, 300 bags contained labels stating 'watermelon seeds/40kg/origin: Pakistan/PROD-Dt:-03/2025/Exp.Dt:-03/2027'. The entire consignment has been seized under Mahazar dated 27.06.2025.

13. The main grounds on which the Writ Petition had been allowed is that there has been no 'import' of the consignments as there has been no intermingling of the products for domestic consumption, or, in other words, there have been no clearances for home consumption, and that the documents accompanying the shipment established that the goods originated from Nigeria and not Pakistan.

14. It is a fact that the consignments have not been cleared for home consumption. Section 2(25) and 2(26) define 'imported goods' and 'importer'. The definition of 'imported goods' is '*any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.*' An importer, in relation to goods, between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be an importer.

15. Section 46 falling under Chapter VII under the head '*Clearance of Imported Goods*' reads as follows:

Section 46. Entry of goods on importation. -



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(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed :

.....

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

(4A) The importer who presents a bill of entry shall ensure the following, namely:-

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

16. Chapter VIII deals with goods in transit comprising Sections 52, 53 and 54 deals with transshipment of goods on payment of duty, reading as follows:

Section 54. Transshipment of certain goods without payment of duty. -

(1) Where any goods imported into a customs station are intended for transshipment, a bill of transshipment shall be presented to the proper officer in such form and manner as may be prescribed:



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Provided that where the goods are being transhipped under an international treaty or bilateral agreement between the Government of India and Government of a foreign country, a declaration for transhipment instead of a bill of transhipment shall be presented to the proper officer in such form and manner as may be prescribed .

(2) Subject to the provisions of section 11, where any goods imported into a customs station are mentioned in the ⁵ [arrival manifest or import manifest] or the import report, as the case may be, as for transhipment to any place outside India, such goods may be allowed to be so transhipped without payment of duty.

(3) Where any goods imported into a customs station are mentioned in the ⁵ [arrival manifest or import manifest] or the import report, as the case may be, as for transhipment -

(a) to any major port as defined in the Indian Ports Act, 1908 (15 of 1908), or the customs airport at Mumbai, Calcutta, Delhi or Chennai or any other customs port or customs airport which the Board may, by notification in the Official Gazette, specify in this behalf, or

(b) to any other customs station and the proper officer is satisfied that the goods are bona fide intended for transhipment to such customs station,

the proper officer may allow the goods to be transhipped, without payment of duty, subject to such conditions as may be prescribed for the due arrival of such goods at the customs station to which transhipment is allowed.

17. There is no dispute on the position that Notification 2/2025 dated 02.05.2025 would apply to transshipments as well. The writ Court has, in arriving at the conclusion that the subject consignments have not been imported, proceeded on the theory of incorporation and intermingling of mass of goods in the Country, relying on the judgments in *K.R.Ahmed Shah*¹¹ and *Lucas T.V.S. Padi, Madras*¹².

¹¹Foot Note Supra (6)

¹²Foot Note Supra (7)



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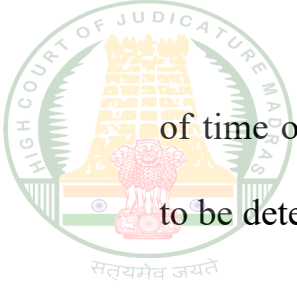
18. We find these judgments distinguishable as they dealt with the determination of the stage at which goods may be treated as exported out of the Country and have been rendered in the context of allowability of drawback allowance under Section 75 of the Act. Inter alia, there is reference to cases that have taken a view that the term ‘import’ connotes a point in time after the goods are off-loaded. However, these decisions have been rendered in different contexts and will not come to the aid of the respondent.

19. In *re : Sea Customs Act*¹³, a Bench comprising nine Hon’ble Judges of the Supreme Court deliberated on the scope and interpretation of Article 289 of the Constitution and answered the reference relating to whether sub-section (1) of Section 20 of the Sea Customs Act, 1878 provided for levy of customs duties on goods imported or exported by sea to the extent and in the manner specified in that sub-section, and other allied questions. The definition of ‘import’, ‘importer’ and ‘imported goods’ that are available under the 1962 Act did not figure in the Sea Customs Act, 1878.

20. A Full Bench of the Bombay High Court in *Apar Private Ltd. and others v. Union of India and others*¹⁴ dealt with the question of when, under the Customs Act, 1962, can the event of importation be said to occur, at what point

¹³ (1878) (AIR 1963 SC.1760)

¹⁴ 1985 (22) ELT 644 (Bom.)



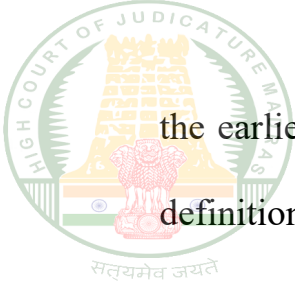
of time or date was the rate of customs duty relatable to imported goods liable to be determined, and other allied questions.

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21. In that case, the goods had entered the territorial waters of India and were stored in a bonded warehouse. On the date when they entered the territorial waters, they were exempt under Notification. However, the Notification was rescinded by the time the goods were removed from the bonded warehouse. Hence, while the assessee contended that importation was complete when the goods entered the territorial waters, the customs authorities contended that they could be taken to have been imported only when the process of import was complete.

22. The Bench has noted the definitions of the terms ‘import’, ‘imported goods’ and ‘India’, the last, as including territorial waters of India. The Bench concluded that the taxable event occurred at a time when they entered the territorial waters of India, no sooner and no later. As to the argument of the process of import was complete only upon finalization of the import procedures, the Bench made a distinction between ‘chargeability’, which stood triggered the moment the consignment enters territorial waters, and ‘quantification’, which is a later event.

23. The judgment of the Supreme Court in *In re : Sea Customs Act* was also distinguished noting that that judgment had been rendered in the context of



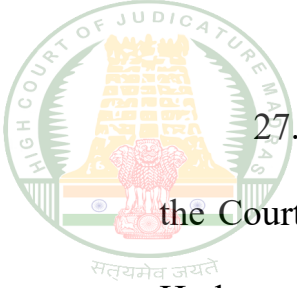
the earlier enactment that was structured differently, without the benefit of the definitions available under the 1962 enactment.

WEB COPY 24. In the present case, we need hardly labour this point as the Notification itself proceeds on the basis that goods entering territorial waters for the purposes of transit shall be taken to be imports. The Notification has not been challenged and hence the parties are bound by the clear language employed, and express intention.

25. In *Mustafa & Najibai Trading Co.*¹⁵, the Supreme Court was concerned with the arrival of a vessel in the Bombay Port without a bonafide purpose. In that context, the Court dealt with what the term ‘import’ would mean, and examine various provisions of the Customs Act. That consignment had been shipped from Dubai to Afghanistan via Karachi, Pakistan and had been refused arrival in Karachi.

26. The Central Board of Revenue of Pakistan allowed re-shipment back to Dubai. On re-shipment of the consignment, along with other goods again left Karachi to Dubai but instead of proceeding to Dubai, arrived in Bombay. The Indian Customs authorities confiscated both the goods and the Vessel that had arrived unauthorisedly, imposing various penalties.

¹⁵Foot Note Supra (1)



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27. The facts have been captured in paragraph 2 of the judgment where the Court records that the Vessel had reached the outer anchorage of Bombay Harbour and entered the inner anchorage the next date but was sent back to outer anchorage. On enquiry and inspection, the Customs Officers had found gunny covered packages bearing the marking '*In Transit to Afghanistan via Karachi and Chamman*', kept below other packages.

28. It was noted that no steps had been taken to file Import General Manifest or other documents for the purposes of voyage to Bombay. The officers proceeded to seize all the packets found on board and thereafter issued show cause notices to the owners of the Vessel, followed by confiscation with an option to redeem on payment of fine and penalties. The importers filed a writ petition that was accepted by the High Court.

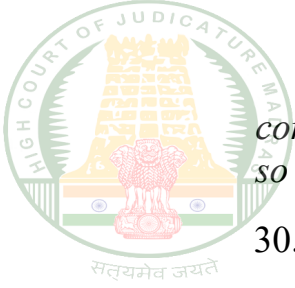
29. The order of the High Court was challenged in appeal by the Union, and at paragraph 26, the Supreme Court states as follows:

26. Moreover, bonafides of the owners or the master of the vessel has a bearing only on the applicability of sub- section (3) of Section 30 which enables the proper officer to permit the import manifest or import report to be amended or supplemented if he is satisfied that the said import manifest or import report is in any way incorrect or incomplete and there is no fraudulent intention. In the present case, the question of applicability of sub-section (3) of Section 30 does not arise because no import manifest was delivered by the Master of the vessel at any time. The intention of the owners or master of the vessel has no bearing on the exercise of the power of confiscation of goods under Section 111 of the Act because, as



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laid down by this Court, confiscation of goods is an action in rem directed against the goods in respect of which the contravention rendering them liable to be confiscated has taken place. [See :Shewpujanrai Indrasanrai Ltd. v. The Collector of Customs & Ors., 1959 SCR 821 at p. 838; and Collector of Customs, Madras & Ors. v. D. Bhoormall (supra)]. In the matter of confiscation of goods under Section 111(d) of the Act intention has, therefore, no bearing. What is required to be seen is whether the goods had been imported or attempted to be imported or brought within the Indian customs water for the purpose of being imported contrary to any prohibition imposed by or under the Act or any other law for the time being in force. If it is found that any goods have been imported or attempted to be imported or brought within the Indian customs water for the purpose of being imported contrary to any prohibition imposed by or under the Act or any other law for the time being in force the said goods would be liable to confiscation under Section 111(d) and the question whether the person importing or bringing the said goods intended to commit violation of the provisions of the Act or any other law for the time being in force would be of no consequence. Similarly, clause (f) of Section 111 provided for confiscation of any dutiable or prohibited goods which are required to be mentioned under the regulations in any import manifest, or import report and which are not so mentioned therein. In the matter of confiscation of goods under Section 111(f) what is required to be seen is whether the goods are dutiable or prohibited goods and are required to be mentioned in the import manifest or import report under the regulations made under the Act and whether they are mentioned in the import manifest/import report. If it is found that the goods are dutiable or prohibited goods and are required to be mentioned under the regulations made under the Act in the import manifest/import report but have not been so mentioned, the goods would be liable to be confiscated and the intention of the default would have no bearing on the exercise of power to confiscate the goods. Since mens rea is not essential for invoking the power of confiscation of the goods under Section 111 of the Act, the intention of the master of the vessel or the owners of vessel and the circumstances under which the vessel containing the goods came to Bombay has no bearing on the exercise of the power of confiscation of goods under Sections 111(d) and 111(f) and all that has to be seen is whether the



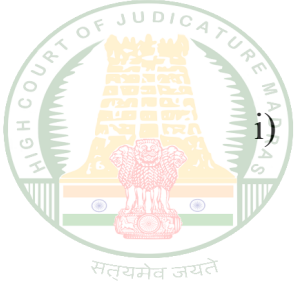
conditions prescribed under the said provisions were fulfilled so as to justify the confiscation of the goods.

30. After considering various provisions of the Act, the Supreme Court concludes that the intention of the Masters of the Vessel would have no bearing on the power of the authorities to confiscate, and what was required to be seen is whether the goods have been brought in contrary to any prohibition that was in force. Paragraph 29 reads as follows:

29. The High Court has held that the goods were obviously in transit to Dubai which was the port of clearance and the visit to Bombay port was not illegitimate or illegal. In holding that there was no contravention of the provisions of clauses (d) and (f) of Section 111, the High Court has proceeded on the basis that since the vessel had come to Bombay for a legitimate purpose and there was no lack of bona fides on the part of the Master and the owners of the vessel in the ship having come to Bombay, it cannot be said that there was violation of the provisions of Section 111(d) and (f) of the Act. As indicated earlier, the finding of the High Court that there was no lack of bona fides on the part of the Master of the vessel and the owners of the ship in the ship having come to Bombay, has been arrived at by the High Court after reversing the finding of fact recorded by the Collector and the Tribunal and it cannot be sustained. We have also indicated that mens rea is not essential for invoking the power of confiscation under Section 111 of the Act and, therefore, the intention of the owners of the vessel or the Master of the vessel has no bearing on the exercise of the power to confiscate the goods under clauses (d) and (f) of Section 111 of the Act.

31. The above judgments support our view to the effect that the subject consignments would constitute imports for the purpose of determining applicability of the Notification.

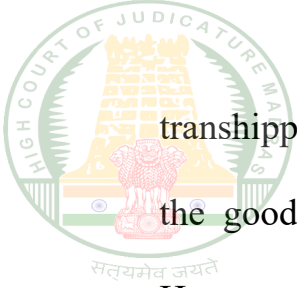
32. The second test undertaken by the Writ Court is to test the point of origin of the subject goods for the purpose of which, the documents that accompanied the consignments have been scrutinized, being:-



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- i) Two commercial invoices dated 14.05.2025 where the country of origin is stated to be Nigeria and the country of destination, Nepal. This document states that the cargo is in transit to Nepal.
- ii) Packing lists that mirror the above facts.
- iii) Customs Declaration before the Dubai Customs where Port of origin is 'SD' which is Sudan, and Port of discharge is Kolkata. There is no reference to Nepal in the customs declaration.
- iv) Certificate issued by the Plant Quarantine and Pesticide Management Centre, where the country of origin is Nigeria and final destination is Mechi.
- v) Certificate issued by the Dubai Chamber of Commerce certifying the Port of origin to be Nigeria.
- vi) Phytosanitary Certificate issued by the Ministry of Climate Change & Environment, UAE certifying Port of origin - Nigeria and confirming final destination as Nepal via Kolkata.
- vii) Bill of Lading certifying the Port of Loading as Jabel Ali, Port of transshipment as Chennai and Port of Discharge as Kolkata.
- viii) The IGM-SEA stating destination port as Kolkata, the import being for the purpose of transshipment.

33. On an analysis of the above documents, what is clear is that (i) Port of Loading of the consignment was Jabel Ali, UAE, (ii) the consignments were



transhipped at Chennai Port onwards to Kolkata Port, (iii) on arrival in Kolkata, the goods would be sent by road to Nepal via road, basis the Treaty, (iv)

However, the point of origin is set out either as Nigeria or in one document, as Sudan. This is a disputed question of fact, that can be resolved by application of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020.

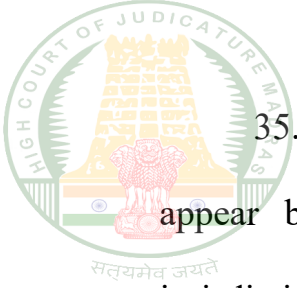
34. This Court had, as early as in December, 2005, suggested that the process for determination of point of origin could be undertaken even then and be completed within three weeks. On 11.12.2025, this was the order that was passed:

6. One aspect that was discussed before us relates to whether a determination under the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (Rules) is necessary. However, the appellants point out that, those Rules apply to import of goods to India where the importer has made a claim of preferential duty.

7. The present case is not a one of import but of transit, which is also covered under Notification dated 02.05.2025. Hence, according to Mr. Sai Srujan Tayi, such determination could well be made by the competent authority, viz., the Commissioner of Customs (Preventive). We agree.

8. We suggest that the process for determination of point of origin commence immediately and be completed within three (3) weeks.

9. List on 15.12.2025 to receive affidavits indicating the time frame that the parties intend to follow for the above.'



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35. When the matter came up thereafter, R1 expressed its intention to appear before the authority without prejudice to their objection on the jurisdiction assumed by the DRI to make a determination on the question of point of origin. According to R1, the proper authority to determine would only be the Central Board of Indirect Taxes and Customs in terms of the Comprehensive Economic Partnership Agreement between the Government of India and Government of United Arab Emirates. Since the reluctance of R1 was palpable, the Court did not pursue that suggestion any further.

36. The factual dispute in regard to point of origin is apparent with the documents revealing origin either from Nigeria, Sudan or Pakistan. Hence, and in light of the discussion as above, we reiterate our disinclination to embark on the exercise of determination of a disputed question of fact and the parties are relegated to the alternate procedures set out under the Statute and the Rules in this regard.

37. One of the arguments raised by R1 in challenging the seizure is that it is only the authorities in Kolkata who ought to have inspected/seized the goods, as the purpose of arrival in Chennai Port was only for transshipment to Kolkata Port. We reject this contention as the authorities of Directorate of Revenue Intelligence (DRI) hold All India jurisdiction as may be seen from Notification No.17/2002-Customs (N.T.) dated 07.03.2002. Hence, it is open to the DRI authorities in Chennai Port to undertake the process of inspection, particularly



as the Port in Chennai is the point of first entry/arrival/import of the consignment in India.

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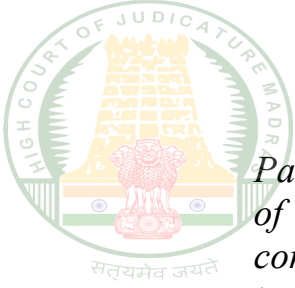
38. The last point relates to the argument of R1 that the Treaty would override Municipal law. Reliance has been placed on *Centre for Public Interest Litigation*¹⁶, where the Court was dealing with a challenge to Section 17A of the Prevention of Corruption Act, 1988 relating to enquiry or investigation of offences relatable to recommendations or decisions taken by a public servant in discharge of official functions or duties, particularly paragraph 132.5, that states as follows:

132.5 There are three courses of action that an Indian Court may take as regards an international legal obligation. In the event of a lacuna in the municipal law, international legal obligations may be used to “paper over the cracks”, so to speak, in the form of using them as the basis to issue guidelines or directions until Parliament enacts a suitable legislation. In the event of a direct conflict between the international legal obligation and municipal law, the municipal law would prevail. However, in instances where there is no direct contradiction between the municipal law and the international legal obligation, the provisions of municipal law should be interpreted by the Court in such a manner that ensures compliance with the international legal obligation particularly in the case of Constitutional provisions.

39. In *National Legal Services Authority*¹⁷, R1 has referred to paragraphs 54 and 55 to argue that it is the Notification/Treaty that will have precedence over Municipal law. Paragraphs 54 and 55 for full appreciation are extracted below:

¹⁶Foot Note Supra (4)

¹⁷Foot Note Supra (3)



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‘54. Article 253 of the Constitution of India states that the Parliament has the power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention. Generally, therefore, a legislation is required for implementing the international conventions, unlike the position in the United States of America where the rules of international law are applied by the municipal courts on the theory of their implied adoption by the State, as a part of its own municipal law. Article VI clause (2) of the US Constitution reads as follows:

“..... all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.”

55. In the United States, however, it is open to the courts to supersede or modify international law in its application or it may be controlled by the treaties entered into by the United States. But, till an Act of Congress is passed, the court is bound by the law of nations, which is part of the law of the land. Such a ‘supremacy clause’ is absent in our Constitution. Courts in India would apply the rules of international law according to the principles of comity of nations, unless they are overridden by clear rules of domestic law. (See Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey (1984) 2 SCC 534, V.O. Tractoroexport v. Tarapore & Co. (1969) 3 SCC 562 and Mirza Ali Akbar Kashani v. United Arab Republic (1966) 1 SCR 391.

40. In the above case the subject matter of discussion was the rights of the transgender community to seek gender identity apart from the one assigned to them at birth. In that context, the Court, considering the scope of the fundamental rights guaranteed under the Constitution of India, held that international law would be applicable where there was silence within Indian law to deal with the situation. In the absence of any law relating to transgenders domestically the Municipal Courts were directed to follow international law.



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41. We are of the considered view that that reasoning would have no application in the present case. There is no silence or vacuum in the Customs Act that would require us to turn to the Treaty in preference to, and overriding the provisions of the Customs Act. On the contrary, the Indian Customs Act is clear when it comes to our understanding on what import is and how it should be dealt with in different situations.

42. Rather, Article 11, '*Exceptions to Convention on Grounds of Public Health, Security, and Protection of Intellectual Property*', stipulates the following caveats:

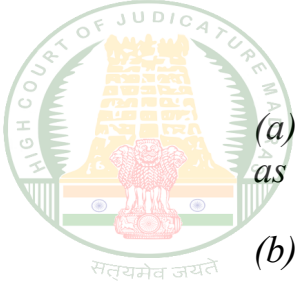
Article 11

Exceptions to Convention on Grounds of Public Health, Security, and Protection of Intellectual Property.

1. No Contracting State shall be bound by this Convention to afford transit to persons whose admission into its territory is forbidden, or for goods of a kind of which the importation is prohibited, either on ground of public morals, public health or security, or as a precaution against diseases of animals or plants or against pests.

2. Each Contracting State shall be entitled to take reasonable precautions and measures to ensure that persons and goods, particularly goods which are the subject of a monopoly, are really in transit, and that the means of transport are really used for the passage of such goods, as well as to protect the safety of the routes and means of communication.

3. Nothing in this Convention shall affect the measures which a Contracting State may be called upon to take in pursuance of provisions in a general international convention, whether of a world-wide or regional character, to which it is a party, whether such convention was already concluded on the date of this Convention or is concluded later, when such provisions relate:



(a) to export or import or transit of particular kinds of articles such as narcotics, or other dangerous drugs, or arms; or

(b) to protection of industrial, literary or artistic property, or protection of trade names, and indications of source or appellations of origin, and the suppression of unfair competition.

4. Nothing in this Convention shall prevent any Contracting State from taking any action necessary for the protection of its essential security interests.

43. Thus, even on this score, the argument that Treaty would override municipal law has no legs to stand and we reject the same.

44. R1 has referred to the judgment of the Calcutta High Court in *Narayani Trading Concern (Pvt.) Ltd*¹⁸ which related to return of Poppy seeds imported from Pakistan through Calcutta Port in transit to Nepal. Narayani Trading Concern had sought a mandamus for return of Poppy seeds which had been granted by the single Judge, as against which, an appeal had been filed by the authorities. That does not appear to be a case involving prohibition for importation from Pakistan, and the circumstances presented by Notification No.6/2025-26 did not arise in that matter. To that extent, the judgment in *Narayani Trading Concern (Pvt.) Ltd.* is of no assistance to R1.

45. One of the arguments advanced is as to whether the extent of seizure may be restricted to the 300 bags which contain the above labels. However, the argument of the appellants is that the entire consignment becomes tainted as all

¹⁸Foot Note Supra (9)



the bags have been placed together in containers. They would argue that there is no justification in splitting the consignments.

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46. We agree that there need be no demarcation at this stage between those bags containing the offending labels and the other bags. Ultimately all 4050 bags are part of two bills of lading constituting one consignment. We have also noted that there are other discrepancies in the documents that reinforce our view that the question of origin of goods is one of fact. Hence, we are not inclined to bifurcate the consignment.

47. In fine, this Writ Appeal is allowed. No costs. Connected Miscellaneous Petition is closed.

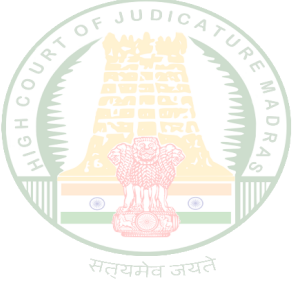
(A.S.M.,J.) (C.K.,J.)
24.09.2026

sl

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No



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WA No. 3594 of 2



Order QR

DR.ANITA SUMANTH J.

AND

C.KUMARAPPAN J.

sl

WA No. 3594 of 2025

AND

CMP NO. 29708 OF 2025

24.09.2026