

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

TUESDAY, THE 10TH DAY OF JUNE 2025 / 20TH JYAISHTA, 1947

WP(C) NO. 18501 OF 2025

PETITIONER/S:

M/S. LUXE PANEL DISTRIBUTORS,
34/440, THOPPIL JUNCTION, THRIKKAKARA, KARIMAKKAD,
ERNAKULAM, REPRESENTED BY ITS MANAGING PARTNER SRI
MUHAMMED NADISH M., PIN - 682021

BY ADVS.
SRI.M.BALAGOPAL
SMT.R.DEVIKA
SMT.ANJALI MENON
SHRI.ARJUN VARGHESE KURIAPPAN

RESPONDENT/S:

- 1 THE ADDITIONAL COMMISSIONER OF CUSTOMS,
(APPRAISING IMPORT), CENTRAL BOARD OF INDIRECT TAXES AND
CUSTOMS, OFFICE OF THE COMMISSIONER OF CUSTOMS, CUSTOM
HOUSE, WILLINGDON ISLAND, COCHIN, PIN - 682009
- 2 THE ASSISTANT COMMISSIONER OF CUSTOMS (APPRAISING
IMPORT) ,
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS, OFFICE OF
THE COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, WILLINGDON
ISLAND, COCHIN, PIN - 682009

BY ADVS.
SHRI.VIVEK A.V.
SHRI.V.GIRISHKUMAR, SENIOR PANEL COUNSEL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
10.06.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

The petitioner is a trader of plywood and is also an importer. The petitioner has secured registration with the Ministry of Micro, Small and Medium Enterprises, Government of India as a Micro Enterprise, as defined under the Micro, Small and Medium Enterprises Development Act, 2006. Ext.P1 is the registration certificate evidencing the same. The Ministry of Commerce and Industry, (Department for Promotion of Industry and Internal Trade), in exercise of powers conferred upon it under the provision of the Bureau of Indian Standards Act, 2016, had issued Plywood and Wooden flush door shutters (Quality Control) Order, 2024, a copy of which is produced as Ext.P2. As per the said Quality Control Order (hereinafter referred to as "QCO") certain standards were prescribed for the products of Plywood and Wooden flush doors shutters. As per Order 1 (2) of the QCO, 2024, the same shall come into force with effect from 28.02.2025. As per the second proviso to Order 1 (2) thereof, in respect of micro enterprises as defined under the Micro Small and Medium Enterprises Development Act, 2006, the said QCO shall come into force with effect from 28.08.2025.

2. The petitioner, during the course of its business, has



imported "INDONESIAN KERUING MATT PLYWOOD" from Indonesia vide Invoice No.017/URS-LPD/EXP/I11/2025 dated 14.03.2025. Ext.P3 is the said invoice and Ext.P4 is the Bill of Entry for the same. However, the clearance of Ext.P4 Bill of Entry was objected to by the respondents on the reason that the goods covered by the said Bill of Entry required BIS certification in terms of Ext.P2 QCO. This writ petition is submitted by the petitioner in such circumstances seeking the following reliefs:

- (a) To issue an appropriate writ, order or direction, declaring that the provisions of Exhibit – P2 Quality Control Order shall be applicable only with effect from 28.08.2025 as mentioned in Exhibit – P2 to the Petitioner being a Micro Enterprises., for the purpose of both manufacture and import of the impugned goods;*
- (b) To issue a writ of mandamus or any other writ, order or direction, directing the 1st and 2nd Respondents to process the Exhibit – P4 and Exhibit – P6 Bills of Entry and clear the goods imported therein, forthwith for home consumption;*
- (c) To issue a writ of mandamus or any other writ, order or direction, directing the 1st and 2nd Respondents to issue necessary directions to the CFS, not to charge demurrage/storage on the goods covered by Exhibit – P4 and Exhibit – P6 Bills of Entry under Regulation 6(1)(I) of the Handling of Cargo in Customs Areas Regulations, 2009.*
- (d) Issue such other and further reliefs as this Hon'ble Court may deem fit and proper in the interest of justice.*



3. A counter affidavit was submitted by the respondents, wherein, the entitlement of the petitioner to claim the exemption with regard to the date of the application of the Ext.P2 QCO to the petitioner, was opposed. According to the respondents, the petitioner, even though got the registration as a Micro Enterprise as defined under MSMED Act 2006, by virtue of Ext.R1(b) notification stands excluded from the purview of said Act, being an establishment engaged in retail trade. Even though the retail traders were later re-included as MSMEs, the same was for a limited purpose of availing priority sector lending only. Ext.R1(c) is the said Office Memorandum dated 27.01.2021. Later Ext.R1(d) OM was issued further modifying Ext.R1(c) by excluding the benefits of provisions of delayed payment as per the MSMED Act 2006 to the wholesale and retail traders, who were originally excluded from the purview of MSMED Act as per Ext.R1(c). Therefore, it was pointed out that, since the status of the petitioner as a micro enterprise, being a retail trader, is limited to the benefit of availing the priority sector lending alone, the exemption as contemplated under the second proviso to Order 1(2) of Ext.P2 cannot be granted to the petitioner.

4. A reply affidavit was submitted by the petitioner in response to the averments contained in the counter affidavit, along



with Ext.P10 was produced, which is a Policy Circular, dated 12.06.2009, wherein, the retail trade was specifically included in MSMED, Act 2006.

5. It is in the above context, the issues which are arising in this writ petition are to be considered.

6. I have heard Sri. M Balagopal, the learned counsel appearing for the petitioner and Sri.Vivek A.V, the learned standing counsel appearing for the respondents.

7. The specific contention raised by the learned counsel for the petitioner is by placing reliance upon the extended period, as per the proviso to Order 1(2) of Ext.P2 QCO. It is pointed out that, as per the said proviso, the Micro Enterprises are excluded from the application of the quality measures contemplated under Ext.P2, till 20.08.2025. Therefore, the petitioner, being a Micro Enterprise, as evidenced by Ext.P1, is entitled to the aforesaid benefits. However, the objections raised by the learned standing counsel for the respondents against such inclusions are mainly based on Exts.R1(b), R1(c) and R1(d). As mentioned above, as per Ext.R1(b), certain categories of establishment were specifically excluded from the purview of MSMED Act, 2006 and the wholesale and retail traders are some of the excluded categories.



8. Admittedly, the petitioner is an entity engaged in wholesale and retail trade and therefore, by virtue of Ext.R1(b), the category to which the petitioner belongs, was excluded from the benefits of MSMED Act, 2006. Later, as per Ext.R1(c), after considering various representations from the retail and wholesale traders, those categories were included under the purview of MSMED Act, 2006. However, such inclusion was for a limited purpose of availing priority sector lending only. The position in this regard is further clarified in Ext.R1(d), which is a further modification/clarification made to Ext.R1(C), wherein, while reiterating the limited purpose of inclusion of retail and wholesale traders under the MSMED Act, the benefit of delayed payments as per the MSMED Act, 2006 was excluded.

9. The learned counsel for the petitioner contended that, as far as Ext.R1(c) is concerned, that only speaks about the 'benefits of retail and wholesale trades" to avail priority sector lending and therefore as far as exemption granted as per Ext.P2 is concerned, the same being an exemption from the applicability of the QCO, it cannot be treated as a "benefit" covered in Ext.R2(c). Therefore, it was pointed out that, the stipulations contained in Ext.R2(c), are not at all relevant as far as the exemption provided in



Ext.P2 with regard to the date of implementation of the QCO is concerned. However, the crucial aspect to be noted in this regard is that, earlier, as per Ext.R2(b), the entire category of wholesale and retail trades were excluded completely from the purview of MSMED Act and later, they were re-included within the purview of the Act. Such re-inclusion was for a limited purpose of availing priority sector lending. Therefore, since such inclusion was for a limited purpose, which is confined to the priority lending only, nothing beyond such benefits can be claimed by the Micro Enterprises, coming within the category of wholesale and retail trade.

10. Therefore, I am of the view that, the contentions raised by the learned counsel for the petitioner in this regard, claiming benefits of exemption, as far as Micro enterprises are concerned, cannot be extended to them. This is more particularly because, it is evident from the Order 1 (2) of Ext.P2 that, the same came into force of 28.02.2025 and specific exclusion was granted to Small Enterprises and Micro Enterprises as per the provisos to the said provision. Since the aforesaid provisos are meant for exemptions, the same have to be strictly construed and in the light of Exts.R2(b) and (c), the status of the petitioner as a micro enterprise, even though it is having a registration, it is only for the purpose of



availing priority sector lending alone and nothing beyond that. Therefore, the extension of time as contemplated under the proviso referred to above cannot be availed by the petitioner being non-eligible.

In such circumstances, I find that, there are no justifiable grounds to grant the reliefs sought in this writ petition. Accordingly, this writ petition is dismissed without prejudice to the other rights of the petitioner, if any, to approach the appropriate forum to get their grievances redressed.

Sd/-

ZIYAD RAHMAN A.A.
JUDGE

pkk

APPENDIX OF WP(C) 18501/2025**PETITIONER EXHIBITS**

EXHIBIT P1 TRUE COPY OF UDYAM REGISTRATION CERTIFICATE NO. UDYAM-KL-02-0113634 DATED 22.02.2025, ISSUED TO THE PETITIONER.

EXHIBIT P2 TRUE COPY OF THE PLYWOOD AND WOODEN FLUSH DOOR SHUTTERS (QUALITY CONTROL) ORDER, 2024, DATED 15.03.2024.

EXHIBIT P3 TRUE COPY OF THE INVOICE NO. 017/URS-LPD/EXP/III/2025 DATED 14.03.2025.

EXHIBIT P4 TRUE COPY OF THE BILL OF ENTRY NO. 9388479 DATED 09.04.2025 FILED BY THE PETITIONER WITH THE RESPONDENTS.

EXHIBIT P5 TRUE COPY OF THE INVOICE NO. 018/URS-LPD/EXP/III/2025 DATED 21.03.2025.

EXHIBIT P6 TRUE COPY OF THE BILL OF ENTRY NO. 9613944 DATED 21.04.2025.

EXHIBIT P7 TRUE COPY OF THE GUIDANCE DOCUMENT ON QUALITY CONTROL ORDERS (QCOS) ISSUED BY THE BUREAU OF INDIAN STANDARDS.

EXHIBIT P8 TRUE COPY OF THE BILL OF ENTRY NO. 9243341 DATED 02.04.2025.

EXHIBIT P9 TRUE COPY OF THE BILL OF ENTRY NO. 9885175 DATED 05.05.2025

RESPONDENT EXHIBITS

EXHIBIT R1(A) A TRUE COPY OF THE LETTER F NO. P-29014/33/2025-LEI DATED 19.03.2025 ISSUED BY DPIIT

EXHIBIT R1(B) A TRUE COPY OF THE OFFICIAL MEMORANDUM F. NO. UAM/MC/01/2017-SME DATED 27.06.2017 ISSUED BY THE MINISTRY OF MICRO, SMALL AND MEDIUM ENTERPRISES

EXHIBIT R1(C) A TRUE COPY OF THE O.M. NO. 5/2(2)/2021-E/P AND G/POLICY DATED 02.07.2021 ISSUED BY MICRO, SMALL AND MEDIUM ENTERPRISES

EXHIBIT R1(D) A TRUE COPY OF THE O.M. 114(1)/2021-P AND G/POLICY DATED 01.09.2021 ISSUED ON BEHALF OF THE MINISTRY OF MICRO, SMALL AND MEDIUM ENTERPRISES

PETITIONER EXHIBITS

EXHIBIT P10 TRUE COPY OF THE POLICY CIRCULAR NO. 5 (6)/2/ 2009-MSME POL DATED 12, 06.2009