

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.A.Nos.2035 to 2042 of 2013
and
M.P.Nos.1, 1, 1, 1, 1, 1, 1 and 1 of 2013

- 1.The Commissioner of Customs (Seaport-Imports)
Custom House No.60, Rajaji Salai
Chennai-600 001. (in all WA's)
 - 2.The Additional Commissioner of Customs (Group 5)
Customs House, No.60,
Rajaji Salai, Chennai-600 001
... Respondents 2 in W.As.No. 2035,
2038 to 2041/13 & 2042/2013
Appellants/Respondents in all WAS
 - 3.The Assistant Commissioner of Customs (Group 5)
Customs House, No.60,
Rajaji Salai, Chennai-600 001.
...R3 in W.A.No.2035, 2039, 2041 &
2042/13 /3rd Appellants /Respondents in
All Was Except in W.A.No. 2040/2013
 - 4.The Additional Commissioner of Customs (Group 7B)
Customs House, No.60, Rajaji Salai, Chennai -1
... R2 in WA. 2036, 2037/13
 - 5.The Additional Commissioner of Customs (Group 7B)
Customs House, No.60, Rajaji Salai, Chennai -1.
... R3 in WA.2036, 2037/13)
- Vs.

1. M/s.Spectroteks
Rep. by its Proprietor Mr.B.Devaraj
Shop No.27, City Centre Plaza,
No.7, Mount Road, Chennai-600 002. .. Respondent
in WA.No.2035/2013

- 1.M/s Shivendra Enterprises,
Dubki Kala, Handia, Allahabad-221503,
Uttar Pradesh, Rep. by its Proprietor
Mr.Shivendra Singh. .. Respondent
in WA.No.2036/2013
- 1.M/s Best Mega International
GL-6, Ansal Bhavan,
K.G.Marg, New Delhi-11 001
Rep. by its Proprietor
Shri Rajesh Kumar Khetterpal. .. Respondent
in WA.No.2037/2013
- 1.M/s.Meenakshi Auto Machines,
New No.62, Old No.39/2,
Aziz Mulk, 2nd Street,
Thousand Lights, Chennai-6.
Rep. by its Proprietor Mr.Hem Chand Dubey .. Respondent
in WA.No.2038/2013
- 1.M/s L.S.K.Traders
Rep. by its Proprietor Mr.A.L.Pathy,
No.5, Varadarajanar Street,
Vedachalam Nagar, Chengalpet-603 003,
Tamilnadu. .. Respondent
in WA.No.2039/2013
- 1.M/s.Kiran Office Solutions,
Village Bhatewara,
P.O., Sanawa, Mirazpur-231 001,
Uttar Pradesh, Rep. by its Proprietor
Mr.Vipin Chandra Durray .. Respondent
in WA.No.2040/2013
- 1.M/s M.G.Copier
No.9. Saraswathy Street,
Advaithaashram Road,
Salem-636 004.
Rep. by its Proprietor N.Saravana Gupta .. Respondent
in WA.No.2041/2013
- 1.M/s.L.S.K.Traders,
Rep. by its proprietor Mr.A.L.Pathy,
No.5, Varadarajanar Street,
Vedachalam Nagar, Chengalpet-603 003,
Tamilnadu. .. Respondent
in WA.No.2042/2013

Prayer: Writ Appeals are filed under Clause 15 of the Letters of Patent, against the common order dated 20.07.2012, passed in W.P.Nos.17361, 14570, 14571, 16792, 17922, 17992, 18036 and 18350 of 2012.

Prayer in WP. 17361 of 2012: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus Directing the 1st and 2nd respondents herein to Release the goods viz. 104 Units of Used Digital Multifunction Print & Copying Machines imported vide Bill of Entry 7188060 dated 22.6.2012 under free as Second hand capital goods in terms of para 2.17 read with definition under para 9.12 of the Foreign Trade Policy of 2009-14 without imposing any restriction in the absence of any specific restriction in para 2.17 of the policy and para 2.33 of the Handbook of procedures 2009-14 and any notification on payment of applicable duties of Customs on the enhanced value by the Chartered Engineer.

Prayer in WP.14570 & 14571/12: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus Directing the respondents herein to provisionally assess and permit clearance of 92 & 14 units of secondhand Digital Multifunction Print & Copying Machines forming the subject matter vide Bill of Entry No.3683561 and 3684120 dated 02.06.2011 upon the payment of applicable duties of Customs on the assessable value as determined by the chartered engineer respectively.

Prayer in WP. 16792/12: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus Directing the respondents 1 and 2 herein to provisionally assess and permit clearance 62 units of the Second Hand Digital Multifunction Print & Copying Machines forming the subject matter vide Bill of Entry No.7166591 dated 20.6.2012 upon the payment of applicable duties of customs on the enhanced assessable value of Rs.12 20 487/- (FOB value of USD 19 860/- + Freight USD 1 670) as determined by the Chartered Engineer.

Prayer in WP. 17922/12 & 18350/12: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus or any other appropriate Writ, order or direction, most specifically in the nature of a Writ of mandamus Directing the 1st and 2nd respondents herein to Release the goods viz. 138 units (in WP. 18350/12) & 129 units (in WP. 17922/12) of Old and Used Digital Multifunction Printing & Copying Machines with Standard Accessories imported vide Bill of Entry No. 7201260 dated 25/06/2012 (in WP. 18350/12) and No.7159703 dt.20.6.2012 (in WP. 17922/12) under Free as Second Hand Capital Goods in terms of para 2.17 read with definitions under 9.12 of Foreign Trade Policy 2009-14 without imposing any restriction in the

absence of specific restriction in para 2.17 of Foreign Trade Policy and in para 2.33 of Hand Book of Procedures 2009-2014 and any Notification on payment of applicable duties of Customs on the enhanced value by the Chartered Engineer.

Prayer in WP. 17992 of 2012: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus Directing the respondents 1 & 2 herein to provisionally assess and permit clearance of 108 units of Second Hand Digital Multifunction Print & Copying Machines forming the subject matter vide Bill of Entry No.7222740 dated 26.6.2012 upon the payment of applicable duties of Customs on the enhanced CIF value of Rs.21 20 965/- (FOB Value of GBP 21 925 + Freight GBP 1 450) as determined by the Chartered Engineer

Prayer in WP. 18036 of 2012: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus Directing the respondents herein to provisionally assess and permit clearance of 107 units of Second Hand Digital Multifunction Print & Copying Machines forming the subject matter vide Bill of Entry No.7208558 dated 25.6.2012 upon the payment of applicable duties of Customs on the enhanced assessable value as determined by the Chartered Engineer.

For Appellants : Mr.t.Pramodkumar Chopda

For Respondent : Mr.S.Baskaran
for Mr.N.Viswanathan

COMMON JUDGMENT

(Judgment of this Court was made by S.MANIKUMAR, J.)

Instant Writ Appeals have been directed against the common order made in W.P.Nos.17361, 14570, 14571, 16792, 17922, 17992, 18036 and 18350 of 2012, dated 20.07.2012, by which the Writ Court directed provisional release of the goods in question which had already been inspected by the authorised engineers, on payment of the appropriate customs duty, subject to the adjudication process conducted as per the relevant provisions of law and in case relating to goods not been inspected by authorised chartered engineers, the customs authorities concerned were directed inspection of such goods, before they are released and such goods were directed to be released on payment of the appropriate customs duty and on the fulfillment of the conditions prescribed by law.

2. On this day, when the matter came up for hearing, inviting attention of this Court, to a decision of the Hon'ble

Division Bench of this Court, in Commissioner of Customs (Seaport-Imports), Chennai Vs. Anand Impex, reported in 2015 (325) E.L.T. 103 (Madras), Mr.S.Baskaran, learned counsel for the respondent submitted that, similar issues raised were rejected by the Hon'ble Division Bench of this Court.

3. Anand's Impex case is squarely applicable to the case on hand. Following the same, instant Writ Appeals are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

//True copy//

Sub Assistant Registrar

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To

- 1.The Commissioner of Customs (Seaport-Imports)
Custom House No.60, Rajaji Salai
Chennai-600 001.
- 2.The Additional Commissioner of Customs (Group 5)
Customs House, No.60,
Rajaji Salai, Chennai-600 001
- 3.The Assistant Commissioner of Customs (Group 5)
Customs House, No.60,
Rajaji Salai, Chennai-600 001.
- 4.The Additional Commissioner of Customs(Group 7B)
Customs House, No.60, Rajaji Salai, Chennai -1
- 5.The Additional Commissioner of Customs (Group 7B)
Customs House, No.60, Rajaji Salai, Chennai -1.

+1cc to Mr.T.Promod Kumar chopda, Advocate SR.No.30517

W.A.Nos.2035 to 2042 of 2013
and

M.P.Nos.1, 1, 1, 1, 1, 1, 1 and 1 of 2013

RV(CO)
GN(17/05/2018)