

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.6689, 6692, 6693, & 6695 of 2019

M/s. Prag Domestic Appliances

8, Amartalla Street, 4th Floor,

Room No.408, Kolkata - 700 001

Rep. by its Proprietrix,

Mrs.Ushma Parag Boghani

...Petitioner in all the W.Ps.

Vs.

1. The Commissioner of Customs

Chennai II Commissionerate,

No.60, Rajaji Salai, Customs House,

Chennai - 600 001.

2. The Joint/Addl.Commissioner of Customs (Gr.5)

No.60, Rajaji Salai, Customs House,

Chennai - 600 001.

3. The Asst/Deputy Commissioner of Customs (Gr.5)

No.60, Rajaji Salai, Customs House,

Chennai - 600 001.

...Respondents in all the W.Ps.

Writ Petition No.6689/2019 is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondent herein to assess and clear the goods under import, viz., 129 units of Old & Used Digital Multifunction Print & Copying Machines, covered under Bill of Entry No.8131490 dated 20.09.2018 upon the payment of applicable duties of customs on the value as determined by the Chartered Engineer vide its report dated 13.10.2018 vis-a-vis the interim orders passed by the Division Bench of this Hon'ble Court in W.P.Nos.15621 to 15623 of 2018 dated 13.02.2019.

Writ Petition No.6692/2019 is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondent herein to assess and clear the goods under import, viz., 122 units of Old & Used Digital Multifunction Print & Copying Machines, covered under Bill of Entry No.9063493 dated 30.11.2018 upon the payment of applicable duties of customs on the value as determined by the Chartered Engineer vide its

report dated 07.12.2018 vis-a-vis the interim orders passed by the Division Bench of this Hon'ble Court in W.P.Nos.15621 to 15623 of 2018 dated 13.02.2019.

Writ Petition No.6693/2019 is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondent herein to assess and clear the goods under import, viz., 118 units of Old & Used Digital Multifunction Print & Copying Machines, covered under Bill of Entry No.9063491 dated 30.11.2018 upon the payment of applicable duties of customs on the value as determined by the Chartered Engineer vide its report dated 04.12.2018 vis-a-vis the interim orders passed by the Division Bench of this Hon'ble Court in W.P.Nos.15621 to 15623 of 2018 dated 13.02.2019.

Writ Petition No.6695/2019 is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondent herein to assess and clear the goods under import, viz., 81 units of Old & Used Digital Multifunction Print & Copying Machines, covered under Bill of Entry No.9188302 dated 10.12.2018 upon the payment of applicable duties of customs on the value as determined by the Chartered Engineer vide its report dated 21.12.2018 vis-a-vis the interim orders passed by the Division Bench of this Hon'ble Court in W.P.Nos.15621 to 15623 of 2018 dated 13.02.2019.

For Petitioner : Mr.N.Viswanathan

For Respondents : Mr.V.Sundareswaran,
Senior Panel Counsel

COMMON ORDER

It is submitted by the learned counsel for the petitioner that the issue involved in these cases is squarely covered by the interim order of Division Bench of this Court made in W.P.No.16126/2019 etc. dated 10.09.2019. He has also produced a copy of the said order.

2. Learned counsel appearing for the respondents is not disputing the said fact.

3. Arising out of the similar facts and circumstances, the Division Bench has passed a common interim order in those cases and ultimately, observed at paragraph No.9 as follows:

"9. Factum of service on the petitioners, as regards rejection of authorization is disputed. Writ petitions for similar prayer have been entertained and interim orders issued. Therefore, without going into the aspect of suppression and consequently maintainability of the writ petitions, and having regard to the main

prayer sought for, and the interim orders granted earlier, we deem it fit to order provisional release of goods on the same terms, as done in W.P.Nos.15621 to 15623 of 2018 dated 13.02.2019. Accordingly, we direct as follows:

(a) Applicable duty on the enhanced value, as determined by the Chartered Engineer, would come to around Rs.2 lakhs and above. Goods need not be detained for the disputed amount to be paid.

(b) Mr.AR.L.Sundaresan, learned counsel appearing for Mr.N.Viswanathan, learned counsel for the petitioners submitted that the disputed amount would be paid in cash, to the competent authority

(c) Petitioners are directed to pay duty applicable on the enhanced value, as determined by the Chartered Engineer. On payment of the same, goods detained in the Custom Fleet Stations, licensed by the Customs, be released. Till the date of release of goods, demurrage charges be waived. Other disputes raised in the writ petitions, would be decided."

4. It is seen some of those writ petitions before the Division Bench are filed seeking for declaration to declare Para 2.31 of the Foreign Trade Policy (2015-2020) issued by the Director General of Foreign Trade as ultravires, unconstitutional and without jurisdiction insofar as it requires authorization for Import Clearance of Secondhand Digital Multifunction Print and Copying Machines.

5. It is seen that the above Writ Petitions are pending, however, by granting provisional release of the goods, so detained, by way of an interim measure. Since these writ petitions are filed only for provisional release of goods and in view of the fact that the Division Bench has granted such relief in those cases by way of interim order, subject to the condition imposed as stated supra, these Writ Petitions are disposed of, as follows:

a) The petitioner in each writ petition shall pay the disputed amount in cash to the competent authority.

b) The petitioner is also directed to pay the duty applicable on the enhanced value as determined by the Chartered Engineer. The goods detained by the respondents

shall be released within a period of seven days from the date of payment. Till the date of release of goods, demurrage charges be waived.

No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

To Sub Assistant Registrar

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+1cc to Mr.V.Sundareswaran, Advocate sr.81288
+5cc to M/s.Viswanathan, Advocate sr.80968

W.P.Nos.6689, 6692, 6693
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