

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.06.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.Nos.12812, 12839, 12842, 12846, 12848,
12852, 12856, 12861, 12866 & 12868 of 2019

M/S.GENUINE COPIER SYSTEMS,
REPRESENTED BY ITS PROPRIETOR, MR.SANJEEV GOEL,
PLOT NO.77, BLOCK-P, DARYA GANJ,
DELHI, DELHI PIN - 110 002.

...PETITIONER IN W.P.NO.12812 OF 2019

SRK OVERSEAS
REPRESENTED BY ITS PROPRIETOR MR. MANOJ
MOHAN 4732/21 I FLOOR DAYANAND MARG
DARYA GANJ DELHI DELHI PIN-110002

... PETITIONER in WP No.12839 of 2019

M/S. STAR COPIERS
REPRESENTED BY ITS PROPRIETOR MR. RAJIV
ANAND 9869/6 SADAR THANA ROAD MULTANI
DHANDA PAHAR GANJ NEW DELHI - 110 055.

... PETITIONER in WP No.12842 of 2019

M/S. SP ASSOCIATES,
REPRESENTED BY ITS PROPRIETOR, MR. YOGENDER
PRATAP, 1/11959 ULDHANPUR NAVEEN SHAHDARA
DELHI - 110 032.

... PETITIONER in WP No.12846 of 2019

M/S. ARIHANT ENTERPRISES,
REPRESENTED BY ITS PROPRIETOR MR. ANIL JAIN
FU 61 VISHAKHA ENCLAVE, PITAMPURA,
DELHI - 110 034.

... PETITIONER in WP No.12848 of 2019

1 M/S AMAR ENTERPRISES

REPRESENTED BY ITS PROPRIETOR, MR. AMAR
SINGH SHOP NO.17 PLOT NO.38 SECTOR - 15
CBD BELAPUR, NAVI MUMBAI PIN- 400 614

... PETITIONER in WP No.12852 of 2019

M/S. KUTTY IMPEX
REPRESENTED BY ITS PROPRIETOR MS. S. MEKALA
43/83 T T K ROAD ALWARPET CHENNAI TAMIL
NADU PIN - 600 004.

... PETITIONER in WP No.12856 of 2019

M/S PHOTOFAX SYSTEM
REPRESENTED BY ITS PROPRIETOR MR. MUNISH
KUMAR 1280 DR. KUKHERJEE NAGAR
DELHI - 110 009.

... PETITIONER in WP No.12861 of 2019

M/S. B.E. OFFICE AUTOMATION
PRODUCTS (P) LTD. REPRESENTED BY ITS
DIRECTOR MR. RAM LBHAGAT YADAV 1 MINI
MARKET NANK PURA MOTI BAGH GURUDWARA
DELHI - 110022.

... PETITIONER in WP No.12866 of 2019

1 M/S RANK OFFICE AUTOMATION PVT LTD
REPRESENTED BY ITS DIRECTOR MR.
KAILASH KUMAR VIRMANI 14 ANSARI MARKET
DARYAGANJ NEW DELHI PIN - 110 002.

... PETITIONER in WP No.12868 of 2019

VS

1. THE COMMISSIONER OF CUSTOMS-II,
NO.60, RAJAJI SALAI,
CUSTOMS HOUSE,
CHENNAI 600 001.

2. THE ADDITIONAL COMMISSIONER OF CUSTOMS-II (Gr5)
NO.60, RAJAJI SALAI,
CUSTOMS HOUSE,
CHENNAI-600 001.

... RESPONDENTS IN ALL WPS

Writ Petitions filed under Article 226 of the Constitution
of India praying to issue a Writ of Mandamus,

Prayer in W.P.No.12812 of 2019:

directing the respondents to pass an order in respect of the
Bill of Entry No.7773421 dated 24.08.2018 by taking into account
the judgments of the Hon'ble High Court of Hyderabad in
W.P.No.2728 of 2018 dated 06.04.2018 and also the decision of
the Tribunal in Final Order No.41864/2018 dated 11.05.2018 and
pending final decision in this matter the impugned goods to be
released provisionally.

WP No.12839 of 2019:

Directing the respondents to pass an order in respect of the Bill of Entry No.8347725 dated 06.10.2018 by taking into account the judgments of the Honble High Court of Hyderabad in W.P.No.2728 of 2018 dated 06.04.2018 and also the decision of the Tribunal in Final Order No.41864/2018 dated 11.05.2018 and pending final decision in this matter the impugned goods to be released provisionally.

WP No.12842 of 2019:

Directing the respondents to pass an order in respect of the Bill of Entry No.9317702 dated 19.12.2018 and 9708982 dated 19.01.2019 by taking into account the judgments of the Honble High Court of Hyderabad in W.P.No.2728 of 2018 dated 06.04.2018 and also the decision of the Tribunal in Final Order No.41864/2018 dated 11.05.2018 and pending final decision in this matter the impugned goods to be released provisionally .

WP No.12846 of 2019:

Directing the respondents to pass an order in respect of the Bill of Entry No.7499296 dated 04.08.2018 , 7578053 dated 10.08.2018, 7930697 dated 06.09.2018 and 2706447 dated 04.04.2019 by taking into account the judgments of the Honble High Court of Hyderabad in W.P.No.2728 of 2018 dated 06.04.2018 and also the decision of the Tribunal in Final Order No.41864/2018 dated 11.05.2018 and pending final decision in this matter the impugned goods to be released provisionally.

WP No.12848 of 2019:

Directing the respondents to pass an order in respect of the Bill of Entries No.7604493 dated 12.08.2018, 8151354 dated 22.09.2018 and 9883310 dated 01.02.2019 by taking into account the judgments of the Honble High Court of Hyderabad in W.P.No.2728 of 2018 dated 06.04.2018 and also the decision of the Tribunal in Final Order No.41864/2018 dated 11.05.2018 and pending final decision in this matter the impugned goods to be released provisionally .

WP No.12852 of 2019:

Directing the respondents to pass an order in respect of the Bill of Entry No.9532442 dated 05.01.2019 by taking into account the judgments of the Honble High Court of Hyderabad in W.P.No.2728 of 2018 dated 06.04.2018 and also the decision of the Tribunal in Final Order No.41864/2018 dated 11.05.2018 and

pending final decision in this matter the impugned goods to be released provisionally .

WP No.12856 of 2019:

Directing the respondents to pass an order in respect of the Bill of Entry No.9613553 dated 11.01.2019 by taking into account the judgments of the Honble High Court of Hyderabad in W.P.No.2728 of 2018 dated 06.04.2018 and also the decision of the Tribunal in Final Order No.41864/2018 dated 11.05.2018 and pending final decision in this matter the impugned goods to be released provisionally .

WP No.12861 of 2019:

Directing the respondents to pass an order in respect of the Bill of Entries No.7451284 dated 01.08.2018 and 2643922 and 30.03.2019 by taking into account the judgments of the Honble High Court of Hyderabad in W.P.No.2728 of 2018 dated 06.04.2018 and also the decision of the Tribunal in Final Order No.41864/2018 dated 11.05.2018 and pending final decision in this matter the impugned goods to be released provisionally .

WP No.12866 of 2019:

Directing the respondents to pass an order in respect of the Bill of Entries No.8286002 dated 02.10.2018 and 8467841 dated 15.10.2018 by taking into account the judgments of the Honble High Court of Hyderabad in W.P.No.2728 of 2018 dated 06.04.2018 and also the decision of the Tribunal in Final Order No.41864/2018 dated 11.05.2018 and pending final decision in this matter the impugned goods to be released provisionally .

WP No.12868 of 2019:

Directing the respondents to pass an order in respect of the Bill of Entry No.9181050 dated 10.12.2018 by taking into account the judgments of the Honble High Court of Hyderabad in W.P.No.2728 of 2018 dated 06.04.2018 and also the decision of the Tribunal in Final Order No.41864/2018 dated 11.05.2018 and pending final decision in this matter the impugned goods to be released provisionally .

For Petitioner : Mr.Sankaranarayanan.S
Assisted by Mr.S.Siva shankar
(in all W.Ps)

For Respondents: Mr.Rajnish Pathiyil
Senior Panel counsel
(in all W.Ps)

C O M M O N O R D E R

This common order will govern these ten writ petitions. In other words, this common order will dispose of these ten writ petitions.

2. Mr.S.Sankaranarayanan, learned counsel for writ petitioners assisted by Mr.S.Siva shankar, learned counsel is before this Court. Mr.Rajnish Pathiyil, learned Senior Panel counsel is before this Court on behalf of both respondents. To be noted, there are two respondents in all these writ petitions and both the respondents in all these ten writ petitions are official respondents.

3. The writ petitioner in each of these ten writ petitions is different. However, this Court is informed by learned counsel on both sides in unison without any disputation or disagreement that the central / core issue in all these ten writ petitions is the same.

4. It is submitted that these writ petitions pertain to import of what is described as 'Multi Function Devices' / Machines ['MFDs' for the sake of brevity] from Singapore and other countries through Chennai Port.

5. Ten different writ petitioners herein had filed different Bills of Entry pertaining to their respective consignments, all of which, this Court is informed are MFDs.

6. The details of the writ petitioners and the Bills of Entry are as follows:

Sl .N o	Writ Petition Numbers	Writ petitioners	Bill of Entry Nos. and Date
1	W.P.No.12812 of 2019	M/s.Genuine Copier Systems	7773421 dated 24.08.2018
2	W.P.No.12839 of 2019	M/s.SRK OVERSEAS	8347725 dated 06.10.2018
3	W.P.No.12842 of 2019	M/s.Star Copiers	9317702 dated 19.12.2018 and 9708982 dated 19.01.2019
4	W.P.No.12846 of 2019	M/s.SP Associates	7499296 dated 04.08.2018, 7578053 dated 10.08.2018, 7930697 dated 06.09.2018 and 2706447 dated 04.04.2019

Sl .N o	Writ Petition Numbers	Writ petitioners	Bill of Entry Nos. and Date
5	W.P.No.12848 of 2019	M/s.Arihant Enterprises	7604493 dated 12.08.2018, 8151364 dated 22.09.2018 and 9883310 dated 01.02.2019
6	W.P.No.12852 of 2019	M/s.AMAR ENTERPRISES	9532442 dated 05.01.2019
7	W.P.No.12856 of 2019	M/s.KUTTY IMPEX	9613553 dated 11.1.2019
8	W.P.No.12861 of 2019	M/s.Photofax System	7451284 dated 01.08.2018 and 2643922 dated 30.03.2019
9	W.P.No.12866 of 2019	M/s.B.E.Office Automation Products(P) Ltd	8286002 dated 02.10.2018 and 8467841 dated 15.10.2018
10	W.P.No.12868 of 2019	M/s.RANK OFFICE AUTOMATION PVT LTD	9181050 dated 10.12.2018

7. The central theme / core issue in these ten writ petitions, which as mentioned supra is the same. On arrival of the aforesaid consignments at Chennai, writ petitioners filed aforesaid Bills of Entry, for clearance of their respective consignments obviously upon payment of duty. It is submitted that the goods were assessed and an inspection report was filed, but the respondents are not taking any action to assess and clear consignments covered under aforesaid Bills of Entry in spite of repeated requests and reminders.

8. In the aforesaid scenario, these ten writ petitions have been filed, with prayers to Mandamus the respondents, to pass orders in respect of aforesaid Bills of Entry by taking into account the judgments of Hon'ble High Court of Telengana and Andhra Pradesh, Hyderabad and orders of Tribunal ['CESTAT' for the sake of brevity].

9. Considering the significance of the prayers, this Court deems it appropriate to extract the prayer in the first of the writ petitions i.e., W.P.No.12812 of 2019, which reads as follows:

'Directing the respondents to pass an order in respect of the Bill of Entry No.7773421 dated 24.08.2018 by taking into account the judgments of the Hon'ble High Court of Hyderabad in W.P.No.2728 of 2018 dated 06.04.2018 and also the decision of the Tribunal in

Final Order No.41864/2018 dated 11.05.2018 and pending final decision in this matter the impugned goods to be released provisionally and pass such other order or orders as this Hon'ble Court may deem fit and proper in facts and circumstances of the case and thus render justice.'

10. As alluded to supra, this Court is informed that the Bills of Entry numbers are different, dates are different and in all other aspects, the prayers are same in all these ten writ petitions.

11. The trajectory, which the hearing took today, leaves this matter turning on an extremely narrow compass.

12. Learned Revenue counsel, brought to the notice of this Court that writ petitions by several other importers with the same prayers were filed and those writ petitions were disposed of by another Hon'ble Single Judge of this Court vide common order dated 22.02.2019, wherein and whereby the Hon'ble Single Judge acceded to the prayer in part by giving some directions to release the consignments, on bonds being furnished.

13. According to learned Revenue counsel, aforesaid common order dated 22.02.2019 made by another Hon'ble Single Judge in W.P.No.26049 of 2018 & etc., batch was carried in appeal by way of intra court appeals vide W.A.No.1215 of 2019 & etc., batch and a Hon'ble Division Bench of this Court allowed the appeals and set aside the order of the Hon'ble Single Judge vide order dated 25.04.2019.

14. For the sake of convenience, this Court deems it appropriate to extract the prayer in the first of the writ petitions before the other learned Single Judge in W.P.Nos.26049 of 2018 & etc., batch and the same reads as follows:

'Directing the respondents herein to assess and clear the goods under import, viz., 466 units of Old & Used Digital Multifunction Print & Copying Machines, covered under Bill of Entry No.7009656 dated 29.6.2018 upon the payment of applicable duties of customs as determined by the Chartered Engineer vide its report dated 10.07.2018 and in terms of the judgment rendered by the Hon'ble Division Bench of the High Court of Andhra Pradesh and Telangana at Hyderabad vide order dated 06.04.2018 in W.P. No.2728 of 2018, which order came to be accepted by the Central Board of Indirect Tax & Customs, New Delhi, vide their communication letter dated 14.06.2018, deciding not to file SLP before the Hon'ble Apex Court as against the said order and also by

considering the petitioner's representation dated 20.07.2018.'

15. To be noted, learned counsel for writ petitioners submits that the prayers in the earlier writ petitions being W.P.No.26049 of 2018 & etc., batch, the first of the writ petitioner's prayer is extracted and reproduced supra and the prayers in the instant ten writ petitions are the same.

16. Most relevant portion of order of the learned Single Judge is contained in Paragraphs 22 to 27 and the same reads as follows:

'22. My attention is drawn to a judgement of the Supreme Court in the matter of Commissioner of Customs Vs. Athul Automations Private Limited in Civil Appeal Nos.1057, 1058, 1060 & 1059 of 2019 dated January 24 of 2019. The Full Bench of the Supreme Court was concerned with a challenge to an order of the Customs Excise and Service Tax Appellate Tribunal that had been in favour of the importer, such importer not having challenged the Foreign Trade Policy itself. In such circumstances, the Bench, at Paragraph 13, permits the release of the goods stipulating the conditions of release as under:

? '13. We therefore find no reason to interfere with the impugned orders. In the statutory scheme of the Foreign Trade Act as discussed, we further find no error in the penultimate direction to the respondents for deposit of bond without sureties for 90% of the enhanced valuation of the goods leaving it to the DGFT to decide whether confiscation needs to be ordered or release be granted on redemption at the market value, in which event the respondents shall be entitled to set off.?

23. The aforesaid judgement would govern those situations of imports of consignments of DMPCM in cases where the Policy has not been challenged before the Courts. In line therewith, I direct the respondents to release the consignments of DMPCM in those cases, where there is no challenge to the policy, upon the petitioner furnishing a bond for 90% of the enhanced valuation of the goods, and security for the remaining 10%, within one (1) week from the date of furnishing of the aforesaid security.

24. Reference is also made to the order of the Division Bench of this Court in WP. Nos.15621 to 15623 of 2018 that states as follows:

? "Heard Mr.N.Viswanathan and Mr.S.Baskaran, learned counsel for the petitioners, Ms.Aparna Nandakumar, learned CGSC for the respondents 1 to

3 and Mr.Venkataswamy Babu SPC for the respondents 4 & 5.

2. Applicable duty on the enhance 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.

3. Mr.N.Viswanathan, learned counsel for the petitioners submitted that the disputed amount would be paid in cash, to the competent authority.

4. Petitioners are directed to pay the 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.?

25. The aforesaid direction has been passed in those cases where the importers have challenged the policy itself. Since none of the petitioners before me have challenged the Policy, the rationale of the above order of the Division Bench will not apply to them.

26. The authorities are also at liberty to initiate proceedings for assessment and adjudication of the consignments in question, in terms of the applicable statutory provisions and in accordance with law.

27. These writ petitions are disposed of in the aforesaid terms. Consequently, connected miscellaneous petitions are closed. No costs.'

17. As mentioned supra, when the matter was carried in appeal by way of intra court appeals to a Hon'ble Division Bench, the Division Bench, allowed the writ appeals and most relevant portion of orders of Hon'ble Division Bench are contained in Paragraphs 26 to 29, which read as follows:

'26.Considering the factual position, the respondent would not be entitled to make a prayer for provisional clearance, as there is non compliance of the vital requirement regarding BIS certificate as required under Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order 2012 dated 07.09.2012 and subsequent orders dated 25.06.2013 and 07.11.2014 issued by MeitY. We find that this issue did not arise in the case of Athul Automations Private Limited (supra) and the only common feature was non production of advance authorisation/import licence. Thus, in our considered view, the decision in the case of Athul Automations Private Limited (supra) is factually distinguishable apart from the fact that the said case arose out of an adjudicatory process in which the factual position was

threadbare analysed by two fact finding authorities. That apart, the Hon'ble Supreme Court left the ultimate decision to be taken by DGFT.

27. As pointed out earlier, none of the provisions of the Foreign Trade Policy or the notification/orders were challenged by the respondents before the learned Writ Court and therefore, the respondent cannot rely on complying with the conditions which have been imposed under the notification and orders which have been issued in public interest. As pointed out by the Hon'ble Supreme Court that merely because a few consignments have been permitted to be cleared in different ports can have no bearing on the case on hand, as each case has to be decided on its own facts. The learned Single Bench had directed furnishing of bond for 90% of the enhanced valuation of the goods and security for the remaining 10%. To be noted that the stage is yet to come for arriving at a valuation as the case is yet to be adjudicated and even much prior to that, the respondent have rushed to this Court and filed writ petitions, after on their own volition warehoused the goods in terms of Section 49 of the Act.

28. In the light of the above discussion, we are of the clear view that the order passed in the writ petitions calls for interference.

29. In the result, the writ appeals are allowed and the order passed in the writ petitions is set aside. The facts clearly disclose that the respondents would not be in a position to either produce authorisation or licence from the authorities of DGFT, nor they would be able to produce any certificate as required under the orders dated 07.09.2012, 25.06.2013 and 07.11.2014 issued by Meity. Therefore, we direct the appellants to commence adjudication process and show cause notice be issued to the respondents within a period of four weeks from the date of receipt of a copy of this judgment. After affording reasonable time to the respondents to submit their reply to the show cause notice, the case be adjudicated on merits in accordance with law after affording an opportunity of personal hearing to the Authorized Representative of the respondents. No costs. Consequently, connected miscellaneous petitions are closed.'

18. It is submitted that the aforesaid order of the Hon'ble Division Bench is now governing the field.

19. In the light of the trajectory, which the earlier set of writ petitions with similar prayers have taken, it follows as an inevitable sequitur that the instant writ petitions, have to be

dismissed following the judgments of Hon'ble Division Bench being order dated 25.04.2019 made in W.A.Nos.1215 of 2019 etc., batch.

20. Be that as it may, a perusal of paragraph 29 of the order of the Hon'ble Division Bench, which has also been extracted and reproduced supra along with the relevant paragraphs reveals that the Hon'ble Division Bench had directed the revenue to commence adjudication process, issue show cause notice, afford reasonable opportunity to the writ petitioners to submit reply to the show cause notices, adjudicate the matter on merits and in accordance with law.

21. In this backdrop, it is now submitted without any disputation or disagreement that the revenue has issued 'show cause notices' ['SCN' for the sake of brevity] to each of the writ petitioners in these ten writ petitions.

22. As show cause notices have been issued, they will take the course as per the directions of the Hon'ble Division Bench in paragraph 29 of the aforementioned order. In other words, writ petitioners shall submit their reply to the SCNs, the same shall be adjudicated upon on merits, after affording an opportunity of personal hearing and the matter will be carried to its logical end.

23. Though the prayer in these writ petitions are not acceded to, these ten writ petitions are disposed of with the aforesaid liberty to the writ petitioners to respond to the SCNs, which is in tune with the aforementioned orders of Hon'ble Division Bench. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//सत्यमेव जयते

Sub Assistant Registrar

To

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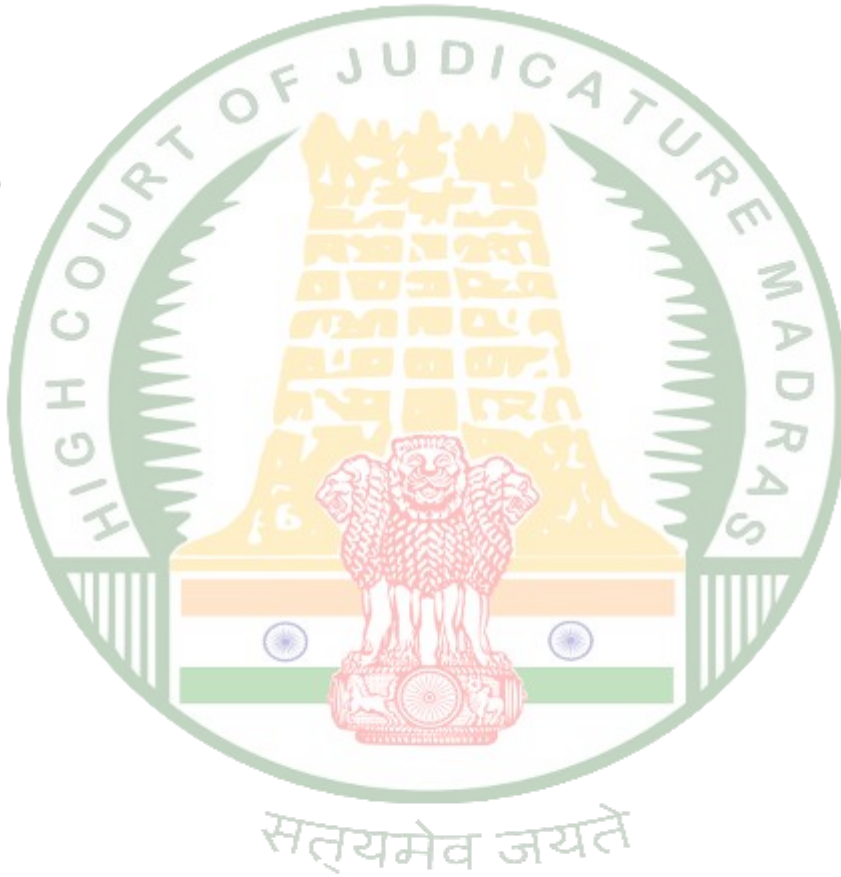
1.The Commissioner of Customs - II,
No.60, Rajaji Salai,
Customs House,
Chennai 600 001.

2.The Additional Commissioner of Customs - II (Gr5),
No.60, Rajaji Salai,
Customs House,
Chennai 600 001.

+2cc to M/s.Rajnish Pathiyil, Advocate Sr.52584

W.P.Nos.12812, 12839, 12842, 12846, 12848,
12852, 12856, 12861, 12866 & 12868 of 2019

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