IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.8574, 8576, 11151, 11157, 11165, 11371,
8575, 11049 & 11113 of 2020
and
WMP. Nos.13604, 13614, 13445, 13555, 13598,
13862, 10365, 10363 & 10364 of 2020

M/S.BEST MEGA INTERNATIONAL
GL-6, Ansal Bhavan, KG Marg,
New Delhi-110 001, Rep. by itsProprietor Rajes
KhetterpalProprietor Rajesh Khetterpal
....Petitioner in WP. No. WP.8574/2020

M/S.EXCEL COPIERS
UB-14D, Arunachal Bhavan, Barakhamba Road, New Delhi-110 001,
Rep. by its Partner Ankit Khetterpal

....Petitioner in WP. No. WP.8576/2020

M/S.DELHI PHOTOCOPIERS
No. B-30/2, 3rd Floor Jhilmil Industrial Area Delhi 110 095,
Rep. by its Proprietor Jitendar Mohan

....Petitioner in WP. No. WP. NO. 11151 OF 2020

M/S. ASIAN COPIERS
No. BG 6/54A, Paschim Vihar New Delhi 110 008
Rep. by its Proprietor Mr. Akshay Khetterpal

....Petitioner in WP. No.11157 of 2020

GRS GRAPHICS,
No.120, Munish Plaza, 20, Ansari Road, Darya Ganj, New Delhi-
110 002. Rep.by its Proprietor Ramesh Kumar Mohan.

....Petitioner in WP. No.11165 of 2020

PRIUS TECHNOLOGIES
Cabin No. 2, B-7, Prabhat Kiran Building, Rejendra Place, New
Delhi - 110008, Rep. by its Proprietor Mr. Ankit Khetterpal

....Petitioner in WP. No.11371 of 2020

M/S.SKYLARK OFFICE MACHINES
Shop No.4, Ground Floor, Door No.10, Aziz Mulk 4th Street,
Thousand Lights, Chennai-6,
Rep. by its Proprietor Rohit Jhunjhunwala
....Petitioner in WP. No.8575 of 2020

M/S.SRI GANAPATHY ENTREPREISES
No. 2, Kanagadoss Street, Gandhinagar Nagalkeni, Chrompet,
Chennai 600 044 Rep. by it Proprietor Mr. K. Saravana Kumar
....Petitioner in WP. No.11049 of 2020

M/ S CITY OFFICE EQUIPMENT
No. 16, Aziz Mulk, 4th Street Tihousand Lights Chennai 600 006
Rep. by its Proprietor Pawan Kumar Jhunjhunwala
....Petitioner in WP. No.11113 of 2020

.vs.

1. THE COMMISSIONER OF CUSTOMS
Chennai II Commissionerate,
No.60, Rajaji Salai, Customs House, Chennai-1

2. THE ADDITIONAL COMMISSIONER
of Customs (Gr.5),
No.60, Rajaji Salai, Customs House, Chennai-1
3. THE DEPUTY COMMISSIONER OF
Customs(Gr.5), No.60, Rajaji Salai,
Customs House, Chennai-1

4. THE DIRECTOR GENERAL OF FOREIGN
Trade and Additional Secretary to the Government of India,
Department of Commerce, Ministry of Commerce and Industry,
Government of India New Delhi.

....Respondents in all Writ Petitions

Prayer in W.P. No. 8574, 8576, 11151, 11157, 11165, 11371, 8575, 11049 and 11113 of 2020.

Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Mandamus to direct the respondents 1 to 3 herein to forthwith release 136 units (W.P. No. 8574 of 2020), 323 units (W.P. No. 8576 of 2020) 115 units (WP. No. 11151 of 2020), 119 units (W.P. No. 11157 of 2020) 136 units (W.P. No. 11165 of 2020), 437 units (W.P. No. 11371 of 2020) 564 units (W.P. No. 8575 of 2020), 129 units (W.P. No. 11049 of 2020) and 482 units (W.P. No. 11113 of 2020) of the old and used digital multifunction print, copying and scanning machines of A3 size vide Bill of Entry No.7492161 dated 21.4.2020 (W.P. No. 8574, of 2020), Bill of Entry

No.7420131 dated 9.4.2020 (W.P. No. 8576 of 2020), Bill of Entry No. 3915065 dt 03.07.2019 (WP. No. 11151 of 2020), Bill of Entry No. 7491233 dt 21.04.2020 (W.P. No. 11157 of 2020), Bill of entry No. 5172821 dated 04.10.2019 (W.P. No. 11165 of 2020), Bill of Entry No. 5245411 dt 10.10.2019 (W.P. No. 11371 of 2020), Bill of Entry No.7262568 dated 17.3.2020 (W.P. No. 8575 of 2020), Bill of Entry No. 8170385 dated 14.07.2020 (W.P. No. 11049 of 2020) and Bill of Entry No. 4245812, dt 27.07.2019 (W.P.No.11113 of 2020) on payment of applicable total Customs Duty on the enhanced value by the Chartered Engineers M/s.Supreme Techno Associates Private Limited, Chennai, vide their Report No.STA/IR/ O and VC/ C-026/2020-2021 dated 22.5.2020 (W.P.No. 8574 of 2020) No.STA/IR/ O and VC/ C-025/2020-2021 dated 22.5.2020 (W.P. No. 8576 of 2020) M/s. National Marine Consultants Inc, Chennai vide their Report No. NMCI / IND / C / 19-20 / 125, dt 10.07.2019 (W.P. No. 11151 of 2020) Supreme Techno Associates Private Limited, Chennai vide their Report No. STA / IR / O and VC / C-054 / 2020-2021 dt 11.06.2020 (WP. No. 11157 of 2020) M/s.National Marine Consutants Inc, Chennai, vide their Report No. NMCI/IND/C/19-20/201 dt. 21.10.2019 (WP. No.11165 of 2020) M/s. National Marine Consultants Inc, Chennai, vide their Report No. NMCI/IND/C/19-20/209 dated 25.10.2019 (WP. No. 11371 of 2020) M/s.ELBI Consultancy (India) Pvt. Ltd, Chennai, vide their Report No.ELBI/ CHE/ 2020/0251, dated 21.5.2020 (W.P. No. 8575 of 2020) Chartered Engineer vide its report dated 25.07.2020 M/s. National Marine Consultants Inc, Chennai, vide theri Report No. NMCI / IND / nC / 19-20 / 145,dt.10.08.2019 (WP. No. 11113 of 2020) in line with the directions of this Honourable Court in WP Nos.16126 of 2019 and 16 others batch, dated 10.09.2019, vide its report dated 25.07.2020, VIS-a-VIS in terms of the interim order passed by the division bench of this Honourable Court in W.P.Nos. 15621 to 15623 of 2018 dated 13.02.2019 and 09.04.2019(W.P. No. 11049 of 2020)

For Petitioner : Mr.ARL.Sundaresan,
Senior Counsel for
Ms.AL.Ganthimathi
in W.P. Nos.8574, 8576, 11151,
11157, 11165, 11371, 8575& 11113 of 2020
Mr.S.Baskaran in W.P. No.11049 of 2020

For Respondents : Ms.R.Hemalatha,
Senior Standing Counsel for R1 to R3
in all WPs
Mr.R.Sankaranarayanan,
Assistant Solicitor General of India
For Mr.Chandrasekar for R4 in all WPs

COMMON ORDER

This batch of nine Writ Petitions have been filed seeking a mandamus directing the Customs Authorities to release consignments of old and used digital multifunction print, copying and scanning machines of A3 size imported by the petitioners on payment of applicable customs duty on the value as enhanced and fixed by the Chartered Engineers. These matters have a checkered history that would be relevant to decide the relief sought.

2. I chronicle below the relevant events:

i) Courts have been seized of several writ petitions from 2019 onwards filed by importers of Multi-Function Devices (MFD/goods) seeking release of the goods either as interim relief in a writ of declaration challenging the Foreign Trade Policy or a mandamus seeking the release as a final prayer.

ii) Originally, import of fax machines and MFD was freely permitted.

iii) The Ministry of Electronics Information and Technology (MeitY) passed an order on 07.09.2012 to the effect that the import of MFD required its approval.

iv) The requirement of approval from MeitY was reiterated by it vide Office Memorandum No.37(10)/2016-IPHW dated 10.03.2017.

v) Subsequent Notification issued on 08.01.2019 again reiterated the condition that MeitY's approval was mandatory for imports of MFD, further expanding the range of the goods covered under the ambit of Notification dated 24.04.2017. Both the 2017 and 2019 Notifications permitted imports of MFD, but not freely, imposing a condition therefor.

vi) While the petitioners would urge that the imports were restricted and, subject to compliance with the condition imposed, the revenue would contend that the imports were prohibited, except upon compliance with the condition imposed. This distinction would be relevant to decide on whether the release was automatic (if the imports were restricted) or at the discretion of the Officer (if the imports were prohibited), in line with Section 125 of the Customs Act, 1962 (in short 'Act') .

vii) As some imports are the subject matter of adjudication before the revenue authorities, I refrain from dealing further with this aspect of the matter.

3. On the question of provisional release of the goods, there are a series of orders passed by this Court as well as the

Hon'ble Supreme Court. One of the early decisions is dated 13.02.2019 and provisional release under Section 110 A of the Act was granted in W.P.Nos.15621 to 15623 of 2018 by way of interim relief in a Writ of Declaration by a Division Bench comprising Mr.Justice S.Manikumar (as he then was) and Mr.Justice Subramoniam Prasad.

4. On 22.02.2019, I decided a batch of Writ Petitions in W.P.Nos.26049 of 2019 etc. batch, where release was sought by way of mandamus. Referring to the order made in W.P.Nos.15621 to 15623 of 2018, I had directed release of the consignment upon the petitioner furnishing a bond of 90% of the enhanced valuation of the goods and security for the remaining 10% within one week from date of furnishing of the security.

5. In Writ Appeal filed by the Revenue (W.A.No.1215 of 2019 etc. batch), a Division Bench comprising Mr.Justice T.S.Sivagnanam and Mrs.Justice V.Bhavani Subbaroyan directed that the matters proceed to adjudication instead, to be completed within a fixed time frame. This was on 25.04.2019.

6. A third batch of matters (W.P.Nos.16126 of 2019 etc. batch) seeking a Writ of Declaration came up before Mr.Justice S.Manikumar (as he then was) and Mr.Justice Subramoniam Prasad, 19 matters in all, seeking Writs of Declaration challenging the Foreign Trade Policy and after a detailed discussion, in the course of which the decision of the earlier Division Bench dated 25.04.2019 was relied upon by the respondents the Bench again granted release of the goods upon condition to pay the duty applicable on the enhanced value as determined by the Chartered Engineer and upon payment of the same directing that the goods detained in the Customs Fleet Stations licensed by the Customs, be released. This was by order dated 10.09.2019.

7. A fourth batch of matters came up before Mr.Justice M.Satyanarayanan and Mr.Justice N.Seshasayee, wherein the conflicting decisions of the two Division Benches dated 25.04.2019 and 10.09.2019 were cited. The Bench noticed that the September, 2019 decision was by way of interim relief and thus applied the view of the Bench in April, 2019 directing the petitioners to go for adjudication. This order is dated 27.09.2019.

8. On 17.12.2019, in a subsequent batch of Writ Petitions, the respondents were directed to conduct adjudication with the full co-operation of the petitioners.

9. In the meantime, revenue had carried the interim orders dated 10.09.2019 passed by the Division Bench to the Hon'ble Supreme Court by way of Special Leave Petitions. By orders dated 14.02.2020, 17.02.2020 and 29.05.2020, the interim release

ordered was confirmed as was the view of the Division Bench in order dated 10.09.2019.

10. I am unaware as to whether the views of the Division Benches dated 25.04.2019 and 27.09.2019 were placed before the Supreme Court and none of the parties are able to confirm this position.

11. The order of interim release passed by the three Judge Bench as recently as on 18.09.2020 states as follows:

> Considering that the petitioners in the other special leave petitions have had their goods released pursuant to orders of this Court, we allow these applications. The goods are to be released on the same terms as have been released in the other cases.

12. Thus, on the question of interim release, I need look no further than the above order that records the position that equally placed petitioners have been granted the benefit of interim release, pending adjudication. The Bench has stated that in such circumstances, it would not be appropriate to take a different view only in the case of some assesses while others have obtained the benefit of release. The present petitioners are also equally entitled to the benefit of release of goods, as sought.

13. On merits, the question as to whether the condition imposed by MeitY is mandatory and whether non-compliance of the same would lead to confiscation, has been decided by the High Court of Telangana at Hyderabad in RR Marketing V. The Union of India and others (W.P.No.28391 of 2019 dated 21.01.2020) in favour of the petitioner. Though the SLP filed by the revenue has been admitted by the Supreme Court, provisional release has been permitted in this very case by order dated 18.09.2020.

14. Thus the Apex Court is clearly of the view that the goods in question are liable to be released in spite of the issue pending consideration on merits.

15. That apart, both in the States of Karnataka and Tamil Nadu where matters have travelled to adjudication and orders of confiscation passed by the assessing officer, appellate authorities have intervened, reversed the orders of adjudication and allowed the assessees' appeals. Two orders of the Commissioner (Appeals), Bangalore and Chennai dated 18.09.2019 and 21.09.2020 in the cases of S.R.Enterprises and SRK Overseas respectively are placed on record. The Customs, Central Excise and Service Tax Appellate Tribunal (CESTAT) has confirmed this position in Karnataka as well and the order of the CESTAT dated

20.12.2019 is stated to have become final with no further appeal having been filed before the High Court.

16. I summarise the discussion below:

i) The Hon'ble Supreme Court has consistently taken a view in favour of provisional release in such cases, noticing that in identical cases, release has been ordered and there would be no justification to take a contra view in a few cases alone.

ii) The issue on merits has been held in favour of the assesse by a Division Bench of the High Court of Telangana at Hyderabad in the case of RR Marketing (supra) and there is no stay of this order by the Supreme Court. Rather provisional release has been ordered in this case as well.

iii) The Appellate Authorities, both at the first and second levels of the hierarchy, have held the matters in favour of the assesses on merits. Some such orders have become final. The distinction as to whether the relief of release is sought by way of Mandamus or by way of interim relief in a writ of Declaration is thus, not material.

17. These Writ Petitions are allowed. The consignments in question will be released upon remittance of the enhanced duty as quantified based upon the valuation of a certified Engineer. Adjudication proceedings to be initiated/will continue to be concluded, as expeditiously as possible. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner of Customs (Gr.5),
Chennai II Commissionerate,
No.60, Rajajai Salai, Customs House,
Chennai - 600 001.

2.The Additional Commissioner of Customs (Gr.5)
No.60, Rajajai Salai, Customs House,
Chennai - 600 001.

3. The Deputy Commissioner of Customs (Gr.5),
No.60, Rajaji Salai, Customs House,
Chennai - 600 001.

4.The Director General of Foreign Trade and
Additional Secretary to the Govt. of India,
Department of Commerce,
Ministry of commerce and Industry,
Govt. of India, New Delhi.

+2cc to Mr.S.Baskaran, Advocate, S.R.No. 4274

+8cc to Mr.R.Hemalatha, Advocate, S.R.No. 4143

+12cc to Mr.AL.Ganthimathi, Advocate, S.R.No. 4411

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RGN(CO)

GN(19/02/2021)