IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.Nos.1393, 1396, 1398, 1403, 1404, 1414, 1421, 1424, 1427, 1429 & 1431 of 2022
and
W.M.P.Nos.1531, 1537, 1541, 1545, 1546, 1561, 1564, 1568, 1570, 1572 & 1576 of 2022

M/S.KUTTY IMPEX,
NO.43/83, T.T.K. ROAD,
ALWARPET, CHENNAI – 600 018.
REPRESENTED BY ITS PROPRIETORESS S.MEKALA
...Petitioner in W.P.No.1393 of 2022

M/S.PRIUS TECHNOLOGIES
CABIN NO.2 B-7 PRABHAT KIRAN BUILDING
RAJENDRA PLACE,
NEW DELHI-110 008.
REP.BY ITS PROPRIETOR
MR.ANKIT KHETTERPAL.
...Petitioner in WP No.1396 of 2022

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.1398 of 2022

M/S.DELHI PHOTOCOPIERS
NO. B-30/2, 3RD FLOOR,
JHILMIL INDUSTRIAL AREA
NEW DELHI-110 095.
REP.BY ITS PROPRIETOR JITENDAR MOHAN
...Petitioner in WP No.1403 of 2022

M/S.ATUL AUTOMATION PVT.LTD
8 BENTICK STREET, TAHER MANSION,
KOLKATA-700 001.
REP.BY ITS DIRECTOR ATUL KAMDAR
...Petitioner in WP No.1404 of 2022

M/S. ATUL AUTOMATION PVT.LTD
8, BENTICK STREET,
TAHER MANSION,
KOLKATA-700 001.
REP.BY ITS DIRECTOR ATUL KAMDAR
...Petitioner in WP No.1414 of 2022

M/S. PARAG DOMESTIC APPLIANCES
8, AMARTALLA STREET,
4TH FLOOR, ROOM NO.408,
KOLKATA, WEST BENGAL-700 001.
REP. BY ITS PROPRIETRIX USHMA BOGHANI.
...Petitioner in WP No.1421 of 2022

M/S. PARAG DOMESTIC APPLIANCES
8, AMARTALLA STREET,
4TH FLOOR, ROOM NO.408
KOLKATA,WEST BENGAL-700 001.
REP. BY ITS PROPRIETRIX USHMA BOGHANI.
...Petitioner in WP No.1424 of 2022

M/S. S.K.IMPEX,
NEW NO.17 (OLD NO.10),
AZIZ MULK 1ST STREET
THOUSAND LIGHTS,
CHENNAI-600 006.
REP. BY ITS PROPRIETOR ANKUR CHHAJER.
...Petitioner in WP No.1427 of 2022

M/S. S.K.IMPEX,
NEW NO.17 (OLD NO.10),
AZIZ MULK 1ST STREET,
THOUSAND LIGHTS,
CHENNAI-600 006.
REP. BY ITS PROPRIETOR ANKUR CHHAJER.
...Petitioner in WP No.1429 of 2022

M/S. J.J.GRAPHICS
NO.4/57, PERIYA THAMBI STREET,
CHOOLAI, CHENNAI-600 112.
REP. BY ITS PROPRIETOR
P.SAMSON.
...Petitioner in WP No.1431 of 2022

Vs.

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

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

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

Prayer in W.P.No.1393 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents herein to forthwith provisional release 463 units of old & used digital multifunction print, scan & copying, machines of A3 size vide Bill of Entry No.3193230 dated 11.05.2019 on payment of applicable total Customs Duty on the value enhanced by the Chartered Engineers' M/s.National Marine Consultants Inc, Chennai, vide their Report No.NMCI/IND/C/19-20/064 dt. 23.05.2019 in line with the directions of this Court in Nos.8574, 8576, 11151, 11157, 11165, 11371, 8575, 11049 & 11113 dated 25.01.2021.

WP No.1396 of 2022 : Directing the Respondents herein to forthwith provisional release 251 units of old and used digital multifunction print, scan and copying, machines of A3 size vide Bill of Entry No. 2560180dated 25.03.2019 on payment of applicable total Customs Duty on the value enhanced by the Chartered Engineers M/s. National Marine Consultants Inc, Chennai, vide their Report No. NMCI/IND/C/18-19/1135 dt.30.03.2019 in line with the directions of this Honorable Court in Nos. 8574, 8576, 11151, 11157, 11165, 11371, 8575, 11049, and 11113 dated 25.01.2021

WP No.1398 of 2022: Directing the Respondents herein to forthwith provisional release 111 units of old and used digital multifunction print, scan and copying, machines of A3 size vide Bill of Entry No. 3125553 dated 06.05.2019 on payment of applicable total Customs Duty on the value enhanced by the Chartered Engineers M/s. National Marine Consultants Inc, Chennai, vide their Report No. NMCI/IND/C/19-20/054 dt.15.05.2019 in line with the directions of this Honorable Court in Nos. 8574, 8576, 11151, 11157, 11165, 11371, 8575, 11049, and 11113 dated 25.01.2021

WP No.1403 of 2022: Directing the Respondents herein to forthwith provisional release 124 units of old and used digital multifunction print, scan and copying, machines of A3 size vide Bill of Entry No. 2984941 dated 25.04.2019 on payment of applicable total Customs Duty on the value enhanced by the

Chartered Engineers M/s. National Marine Consultants Inc, Chennai, vide their Report No. NMCI/IND/C/19-20/040 dt.04.05.2019 in line with the directions of this Honorable Court in Nos. 8574, 8576, 11151, 11157, 11165, 11371, 8575, 11049, and 11113 dated 25.01.2021

WP No.1404 of 2022: Directing the Respondents herein to forthwith provisional release 393units of old and used digital multifunction print, scan and copying, machines of A3 size vide Bill of Entry No. 7523334 dated 25.04.2020 on payment of applicable total Customs Duty on the value enhanced by the Chartered Engineers M/s. Supreme Techno Assicuates private limited, Chennai, vide their Report No. STA/IR/OandVC/C-053/2020-2021 dt.11.06.2020 in line with the directions of this Honorable Court in Nos. 8574, 8576, 11151, 11157, 11165, 11371, 8575, 11049, and 11113 dated 25.01.2021

WP No.1414 of 2022 : Directing the Respondents herein to forthwith provisional release 114 units of old and used digital multifunction print, scan and copying, machines of A3 size vide Bill of Entry No. 9510925 dated 03.01.2019 on payment of applicable total Customs Duty on the value enhanced by the Chartered Engineers M/s. National Marine Consultants Inc, Chennai, vide their Report No. NMCI/IND/C/18-19/883 dt.11.01.2019 in line with the directions of this Honorable Court in Nos. 8574, 8576, 11151, 11157, 11165, 11371, 8575, 11049, and 11113 dated 25.01.2021

WP No.1421 of 2022: Directing the Respondents herein to forthwith provisional release 114 units of old and used digital multifunction print, scan and copying, machines of A3 size vide Bill of Entry No. 8055078 dated 02.07.2020 on payment of applicable total Customs Duty on the value enhanced by the Chartered Engineers M/s. Supreme Techno Associates Private Limited, Chennai, vide their Report No. STA/IR/O and VC/C-096/2020-2021 dt.17.07.2020 in line with the directions of this Honorable Court in Nos. 8574, 8576, 11151, 11157, 11165, 11371, 8575, 11049, and 11113 dated 25.01.2021

WP No.1424 of 2022 : Directing the Respondents herein to forthwith provisional release 101 units of old and used digital multifunction print, scan and copying, machines of A3 size vide Bill of Entry No. 7822015 dated 04.06.2020 on payment of applicable total Customs Duty on the value enhanced by the Chartered Engineers M/s. Supreme Techno Associates Private Limited, Chennai, vide their Report No. STA/IR/O and VC/C-061/2020-2021 dt.15.06.2020 in line with the directions of this Honorable Court in Nos. 8574, 8576, 11151, 11157, 11165, 11371, 8575, 11049, and 11113 dated 25.01.2021

WP No.1427 of 2022 : Directing the Respondents herein to forthwith provisional release 124 units of old and used digital multifunction print, scan and copying, machines of A3 size vide Bill of Entry No. 2760996 dated 08.04.2019 on payment of applicable total Customs Duty on the value enhanced by the Chartered Engineers M/s. National Marine Consults Inc, Chennai, vide their Report No. NMCI/IND/C/19-20/010 dt.13.04.2019 in line with the directions of this Honorable Court in Nos. 8574, 8576, 11151, 11157, 11165, 11371, 8575, 11049, and 11113 dated 25.01.2021

WP No.1429 of 2022: Directing the Respondents herein to forthwith provisional release 122 units of old and used digital multifunction print, scan and copying, machines of A3 size vide Bill of Entry No. 2916244 dated 20.04.2019 on payment of applicable total Customs Duty on the value enhanced by the Chartered Engineers M/s. National Marine Consultants Inc, Chennai, vide their Report No. NMCI/IND/C/19-20/029 dt.27.04.2019 in line with the directions of this Honorable Court in Nos. 8574, 8576, 11151, 11157, 11165, 11371, 8575, 11049, and 11113 dated 25.01.2021

WP No.1431 of 2022: Directing the Respondents herein to forthwith provisional release 226 units of old and used digital multifunction print, scan and copying, machines of A3 size vide Bill of Entry No. 3167628 dated 09.05.2019 on payment of applicable total Customs Duty on the value enhanced by the Chartered Engineers M/s. National Marine Consultants Inc, Chennai, vide their Report No. NMCI/IND/C/19-20/057 dt.20.05.2019 in line with the directions of this Honorable Court in Nos. 8574, 8576, 11151, 11157, 11165, 11371, 8575, 11049, and 11113 dated 25.01.2021.

For Petitioner (in all WPs) : Mr.AR.L.Sundaresan
Senior Counsel
for Mrs.AL.Gandhimathi

For Respondents (in all WPs): Mrs.R.Hemalatha
Senior Standing Counsel

COMMON ORDER

Since the issue raised in these writ petitions is one and the same, with the consent of Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioners and Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the respondents, these writ petitions were heard together and are being disposed of by this common order.

2. The petitioners have imported a machine or goods called Multi-Function Devices from foreign country sometime in the year 2019 to 2021 at various dates. The dates depends upon the bill of lading. However, according to the learned Senior Counsel appearing for the petitioners, these goods were imported prior to 18.09.2021 based on the date of lading as well as the date of bill of entry except in one or two cases.

3.The main controversy arose in this batch of cases is that, during the pendency of withholding of the goods concerned, whether these goods can be released by way of provisional release under the provisions of the Customs Act.

4.Mr. AR.L.Sundaresan, learned Senior Counsel appearing for the petitioners has in fact submitted that, the issue raised in these writ petitions, especially in the context of prayer sought for in these writ petitions are covered by the earlier decision of this Court, which has been confirmed by the Hon'ble Supreme Court.

5. He has brought to the notice of this Court that, in fact, similar issue had come up for consideration before this Court in a batch of writ petitions in W.P.No.8574 of 2020, etc., batch in the matter of M/s. Best Mega International Vs. The Commissioner of Customs, Chennai and others, where a learned Judge of this Court by a common order dated 25.01.2021 having considered these aspects, where also similarly placed persons sought for a Mandamus for releasing of the similar goods by way of provisional release, had passed the following order :

> "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."

6.He would also submit that, as against the said orders passed by the Writ Court, in fact intra-Court appeals have been filed in W.A.No.642 of 2021, etc., in the matter of The Commissioner of Customs, Chennai and others Vs. M/s. Best Mega International and another.

7.The Division Bench having considered the matter at length has ultimately concluded that, the order passed by the learned Judge in the Writ Court directing the Revenue to release the goods in question by way of provisional release was to be set aside, accordingly, by setting aside the order had allowed the Writ Appeals and further directed the Customs Department to consider the application filed by the respective writ petitioners therein for provisional release and pass orders on merits and in accordance with law within a time frame.

8.He would also submit that, as against the said order passed by the Division Bench, dated 04.03.2021 in Best Mega International case (cited supra), Special Leave Petitions were filed. Those Special Leave Petitions having been tagged with some similar matters in M/s. Delhi Photocopiers Vs. The Commissioner of Customs, Chennai and others were heard. The Hon'ble Supreme Court has passed the following order on 11.08.2021 :

"On 05.07.2021, this Court had issued notice in these matters. Despite the fact that the matter was pending before this Court, the Department went ahead and confiscated the goods which are the subject matter of these petitions on 17.07.2021. Mr.N.Venkataraman, learned ASG, realizing the difficulty in his way, has asked the Department to stay its hands so far as the confiscation is concerned. We see no reason to differ from a number of orders that have been passed by this Court in the past for provisional release of goods. However, it has been pointed out to us that at least on and from 01.04.2020, the goods, according to the Department, are clearly prohibited goods and on and from this date, unless an order is made under Section 125, the goods must stand confiscated.

We stay the confiscation of these goods. The Notification dated 01.04.2020 is the subject matter of controversy before this Court, particularly in view of a subsequent Notification dated 18.03.2021 that has been pointed out by Mr.Arvind Datar, learned Senior Counsel. We, therefore, allow the goods involved in these petitions, to be provisionally released on the same terms that have been indicated in all the other cases. The order dated 18.09.2020 may, in particular, be looked at for this purpose.

In view of above, the Special Leave Petitions are disposed of.

Pending interlocutory application(s), if any, is/are disposed of."

9.Relying upon these decisions, the learned Senior Counsel would point out that, in these cases also, since the petitioners sought for a provisional release, that prayer can be allowed on same terms, which have been given by the Writ Court referred to above as has been confirmed by the Hon'ble Supreme Court in the order referred to above.

10.However, Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the respondent Revenue would point out that, as per notification dated 01.04.2020, the goods in question, which are sought to be released by way of provisional release are prohibited goods and in respect of the notification, which was recently issued on 18.03.2021 is concerned, these Multi-Function Devices, which are exactly imported by these petitioners have been brought under the category of printers, which have already been considered to be an importable goods have been given effect to only after six months from the date of notification. If that being so, since the notification was issued on 18.03.2021 it would take effect only from 18.09.2021 i.e., after six months, before which, whatever the goods imported, according to the petitioners, though can be considered as a goods can be permitted, in view of the notification dated 01.04.2020, these goods, since are prohibited goods, they are not entitled for even provisional release. Therefore, the Revenue can go ahead with the adjudication process, which may lead to the logical conclusion under the provisions of the Customs Act. Therefore, citing these reasons, the learned Senior Standing Counsel appearing for the respondents opposed the prayer sought for in these writ petitions.

11.I have considered the said rival submissions made by the learned counsel appearing for the parties and perused the materials placed before this Court.

12.Whether a notification has been issued on 18.03.2021 under which, the goods in question, namely Multi-Function

Devices are brought under the category of printers with effect from 18.09.2021, based on which, whether the petitioners are not entitled to get it released and also based on 01.04.2020 notification, whether the goods which are in question are prohibited goods or not, all these matters are pending before the law Courts.

13.In this regard, the policy decision taken by the Government i.e., the Revenue has already been put under challenge in a batch of cases before this Court, which are said to be pending.

14.Moreover, in the order dated 11.08.2021, the Hon'ble Supreme Court has taken note of these factors, where the arguments advanced on behalf of the Revenue before the Hon'ble Supreme Court was that, on and from 01.04.2020, the goods, according to the Department, are clearly prohibited goods and on and from that date, unless an order is made under Section 125 of the Customs Act, the goods stands confiscated, the Hon'ble Supreme Court had stayed the confiscation process and also has observed that, the notification dated 01.04.2020 is the subject matter of controversy before the Hon'ble Supreme Court, particularly in view of the subsequent notification dated 18.03.2021. Therefore, the goods which are in question were allowed to be released by way of provisional release on the same terms and conditions, which means, the enhanced duty has to be paid by the petitioners/importers as a condition precedent for getting release of these goods by way of provisional release.

15. Therefore, as of now, unmindful of the pendency of the litigations with regard to the applicability or otherwise of the notifications, namely notification dated 01.04.2020 or 18.03.2021, independently the prayer sought for by way of Mandamus can be considered and granted, because of the aforestated judgments, where, the learned Single Judge order dated 25.01.2021 has been confirmed by the Hon'ble Supreme Court by order dated 11.08.2021 by reversing the Division Bench order dated 04.03.2021.

16. In that view of the matter, the arguments advanced by the learned Senior Counsel appearing for the petitioners that, the issue raised in these writ petitions especially in the context of the prayer of Mandamus sought for herein is covered by the said decision of the Court of Law including the decision of the Hon'ble Supreme Court dated 11.08.2021 is to be accepted.

17. In that view of the matter, these writ petitions are disposed of with the following orders :

(i) That there shall be a direction to the respondents to consider the plea of the petitioners to release the goods by way of provisional release on condition that, the petitioner shall pay/deposit the enhanced duty amount. On receipt of such enhanced duty amount paid by the petitioners, the goods in question shall be released within a period of three weeks thereafter.

(ii) For payment of such duty, quantification shall be made by the Customs forthwith within one week from the date of receipt of a copy of this order. On receipt of such quantification, the payment shall be immediately made by the petitioners and on receipt of the payment in entirety, the goods shall be released as indicated above at the outer limit of three weeks.

(iii) It is made clear that, this order will not stand in the way for Customs Department to go ahead with the further proceedings including the adjudication in the manner known to law.

(iv) It is further made clear that, in the earlier interim order passed in a related writ petitions by an another Division Bench of this Court, that demurrage charges till date for the goods was directed to be considered for waiver. In this regard, if any application is filed by the petitioners seeking such a waiver of demurrage charges, the same shall be considered and decided by the respondents objectively.

18. With these observations and directions, all the Writ Petitions are ordered accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

sp/sgl

To

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

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

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

+27cc to Mr.C.T.Murugappan, Advocate, S.R.No.19408

+6cc to M/s.R.Hemalatha, Advocate, S.R.No.20082

W.P.Nos.1393, 1396, 1398, 1403,
1404, 1414, 1421,1424,
1427, 1429 & 1431 of 2022

SR-II(CO)
RGA(27/04/2022)