IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	27.07.2023
Pronounced on	18.12.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

W.P.No.2265 of 2022
and
W.M.P.No.2438 of 2022

M/s.Skylark Office Machines,
No.10, Aziz Mulk, 4th Street,
Thousand Lights,
Chennai – 600 006.
Represented by its Proprietor, Rohit Jhunjhunwala ... Petitioner

Vs.

1. The Additional Commissioner of Customs (Concor ICD),
   No.60, Rajaji Salai, Customs House,
   Chennai – 600 001.

2. The Deputy/Asst. Commissioner of Customs (Concor ICD),
   Tondiarpet, Ennore High Road,
   Chennai – 600 019. ... Respondents

Prayer: Writ 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 forthwith provisionally release the four consignments of old & used digital multifunction copying, printing & scanning machines of A3 size, vide Bills of Entry Nos.(1) 5413583 dated 13.09.2021, (2) 5474613 dated 17.09.2021, (3) 5559768 dated 23.09.2021 & (4) 5560004 dated 23.09.2021 on payment of applicable total Customs Duty on the enhanced value as appraised by the above Chartered Engineers' M/s.Supreme Techno Associates Private Limited, Chennai, vide their Inspection Reports & Valuation Certificates Nos.(1) STA/IR/O&VC/C-395/2021 – 2022 dated 22.09.2021, (2) STA/IR/O&VC/C-429/2021-2022 dated 06.10.2021 (3) STA/IR/O&VC/C-430/2021-2022 dated 07.10.2021 & (4) STA/IR/O&VC/C-435/2021-2022 dated 08.10.2021, in line with the directions of this Hon'ble Court in W.P.Nos.8574 of 2020 and seven others batch dated 25.01.2021 as upheld by the Hon'ble Supreme Court of India vide, Order dated 11.08.2021 in SLP.No.7565 of 2021 batch.

For Petitioner : Mr.B.Kumar,
learned Senior Counsel,
for Mr.C.T.Murugappan

For Respondents : Mrs.R.Hemalatha
Senior Standing Counsel

ORDER

This Writ Petition has been filed for a Mandamus to direct the Respondents 1 and 2 herein to forthwith provisionally release the four consignments of old and used digital multifunction copying, printing and scanning machines of A3 size, vide Bills of Entry Nos.(1) 5413583 dated

13.09.2021, (2) 5474613 dated 17.09.2021, (3) 5559768 dated 23.09.2021 and (4) 5560004 dated 23.09.2021 on payment of applicable total Customs Duty on the enhanced value as appraised by the above Chartered Engineers' M/s.Supreme Techno Associates Private Limited, Chennai vide their Inspection Reports and Valuation Certificates Nos.(1) STA/IR/O&VC/C-395/2021 – 2022 dated 22.09.2021, (2) STA/IR/O & VC/C-429/2021 – 2022 dated 06.10.2021 (3) STA/IR/O&VC/C-430/2021-2022 dated 07.10.2021 & (4) STA/IR/O&VC/C-435/2021-2022 dated 08.10.2021, in line with the directions of this Hon'ble Court in W.P.Nos.8574 of 2020 and seven others batch dated 25.01.2021 as upheld by the Hon'ble Supreme Court of India vide, Order dated 11.08.2021 in SLP.No.7565 of 2021 batch.

2. The petitioner is seeking provisional release of the goods which are admittedly prohibited under Section 110 A of the Customs Act, 1962.

3. The petitioner had originally filed four Bill of Entries. The details of the Numbers, Date, Invoice value and the Value adopted in the Bill of Entries are as under:-

Date	Bill Of Entry No.	Date	Invoice No.	Actual Transaction Value in US$(C&F)
13.09.2021	5413583	28.08.2021	20216	1,11,760
17.09.2021	5474613	04.09.2021	0004	1,05,000
23.09.2021	5559768	11.09.2021	0172	73,095
23.09.2021	5560004	11.09.2021	841	1,34,500

4. Earlier this Court by its order dated 16.06.2023 had directed the Department to release the goods covered by the Bill of Entry No.5413583 dated 13.09.2021 and Bill of Entry No.5474613 dated 17.09.2021. The operative portion of the said order reads as under:-

> *"Heard Mr.B.Kumar, learned Senior Counsel, for the petitioner and Mrs.Hema Murali Krishnan, learned Senior Standing Counsel, for the Customs Department.*
>
> *2. The prayer in the writ petition is for a mandamus seeking release of consignments in four bills of entry. After some hearing, the cause of action is bifurcated into two.*
>
> *3. As regards bills of entry (i) 5413583 dated 13.09.2021 and (ii)5474613 dated 17.09.2021, both learned counsel would accede to the position that an identical request for release was considered in the case of* ***M/s. BE Office Automation Product Limited and The Commissioner of Customs and others [W.P.No.24911 of 2022 dated 06.06.2023]****. The order reads thus:-*
>
> *"The petitioner seeks a certiorified mandamus*

calling for and quashing order dated 17.08.2022 passed by the Additional Commissioner of Customs / R2. It consequentially seeks a direction to R2 to forthwith provisionally release used Multifunction Digital Print and Copying Machines in BE Nos. 8286002/02.10.18; 8467841/15.10.18, 7884546/03.09.18 and 7917595/05.09.18 (MFDs / goods in question).

*2. The petitioner relies on the judgment of the Hon'ble Supreme Court in the case of **Delhi Photocopiers** v **the Commissioner of Customs** dated 11.08.2021 in S.L.P.(c) No. 7565 of 2021.*

3. Though a counter has been filed by the respondents objecting to the averments in the writ affidavit, learned Standing Counsel would point out that there has been a shift in the legal position and pre and post 17.09.2021. Prior to 17.09.2021, import of goods in question was 'restricted' whereas post 17.09.2021, such imposition stands prohibited. The judgment of the Hon'ble Supreme Court in S.L.P.(C) No. 7565 of 2020 dealt with a challenge by the respondents to orders of this Court whereunder directions had been given for provisionally release goods similar to the goods in question, on terms, and complete the process of adjudication within a fixed time frame. In that context, the Hon'ble Court directs provisional release referring to several other orders passed by the Hon'ble Court along similar lines. The order extracted below:-

"We have heard the learned senior counsel appearing for the petitioner(s) and Mr. N. Venkataraman, learned Additional Solicitor General appearing for the respondent(s) at

length.

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 3 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."

4. In light of the aforesaid judgment, learned Standing Counsel does not very seriously object to this Court directing provisional release of the goods in question. Needless to say, a final view will be taken based on the adjudication proceedings.

5. Learned counsel for the petitioner confirms categorically that enhanced duty will be remitted. He makes a prayer for waiver of demurrage, which may be addressed to the appropriate respondent for consideration in accordance with law and applicable regulations.

6. The impugned order is set aside and the goods shall be released within a period of two weeks from today on payment of enhanced duty.

7. Writ petition stands disposed with above directions. No costs. Connected miscellaneous petitions are closed."

4. The identical issue had been raised in this case as well as the bills of entry are dated 13.09.2021 and 17.09.2021 and the notification in question is dated 18.03.2021, effective till 17.09.2021. Hence, the aforesaid two bill of entry i.e., (i) 5413583 dated 13.09.2021 and (ii)5474613 dated 17.09.2021 would be squarely covered by the ratio of the judgment of the Hon'ble Supreme Court in the case of ***Delhi Photocopiers v the Commissioner of Customs*** *dated 11.08.2021 in S.L.P.(c) No. 7565 of 2021, extracted above.*

5. Thus, the above two consignments (i) 5413583 dated

13.09.2021 and (ii)5474613 dated 17.09.2021 shall be released upon payment of enhanced duty and prayer for waiver of demurrage, if any, may be addressed to the appropriate respondent for consideration in accordance with law and applicable regulations.

6. As far as the bills of entry bearing nos. 3 and 4 are concerned, i.e., (iii) 5559768 dated 23.09.2021 and (iv) 5560004 dated 23.09.2021, learned Senior Counsel, refers to the judgment in the case of **Commissioner of Customs (Import) v Rakesh Kumar and Co., (2007)** *220 ELT 47 which is distinguished by learned Senior Standing Counsel on the ground that the decision touches upon Foreign Trade Policy and not the Customs Act. The second decision in the case of Matraco (India) Limited v Union of India and others [2003 (5) Mh.L.J.317] learned standing counsel points out, does not specifically refer to and dealt with the provisions of Section 15 of the Customs Act. The aforesaid statutory provision stated as follows:-*

> *"15. Date for determination of rate of duty and tariff valuation of imported goods.—*
> *(1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force,—*
> *(a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section;*
> *(b) in the case of goods cleared from a warehouse under section 68, on the date on which 3[a bill of entry for home consumption in respect of such goods is presented under that section];*
> *(c) in the case of any other goods, on the date of payment of duty: 4[Provided that if a bill of entry has been presented before the date of entry inwards of the*

vessel or the arrival of the aircraft by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.]
(2) The provisions of this section shall not apply to baggage and goods imported by post."

7. *Based on a reading of this aforesaid position, it is the date of bill of entry that would determine the applicable rate of duty. In such an event, seeing as both the bills of entry are subsequent to the date of notification, these consignments, prima facie, are not entitled for provisional release.*

8. *Learned Senior Counsel seeks a short accommodation to respond."*

5. The above order dated 16.06.2023 was based on the decision of the Hon'ble Supreme Court in the case of **Delhi Photocopiers** vs. **the Commissioner of Customs** dated 11.08.2021 in S.L.P.(C) No. 7565 of 2021 and the decision of this Court in **M/s.BE Office Automation Product Limited and the Commissioner of Customs and Others** rendered in W.P.No.24911 of 2022 vide order dated 06.06.2023.

6. Thus, the relief sought for in the present writ petition is now confined to only two Bill of Entries viz., Bill of Entry.No.5559768 dated

23.09.2021 and Bill of Entry.No.5560004 dated 23.09.2021.

7. The second hand imported Multi Function Devices are said to incorporate Printers, Scanners and Fax machine and Photocopiers etc. The petitioner had reportedly placed purchase orders on the overseas suppliers prior to 18.09.2021.

8. The petitioner had filed these two Bills of Entries on 23.09.2021. The Bill of Lading for import of these Multi Function Devices are dated 13.09.2021. The petitioner had declared the imported invoice value of the imported Multi Function Devices for US$ 73,095 and US$ 134,500. After the Bill of Entries were filed, the transaction value was enhanced for the purpose of payment of Customs Duty to US$ 93,725 and US$ 1,66,340.

9. The Department however entertained a view that the petitioner was not indeed entitled to import these Multi Function Devices in view of the restrictions in "Electronics and Information Technology Goods

(Requirements for Compulsory Registration) Order, 2012 vide Notification issued by the Ministry of Electronics and Information Technology dated 07.09.2012 as amended by Notification dated 01.04.2020 in S.O.1236(E) of Ministry of Electronics and Information Technology.

10. As per Sl.No.7 Schedule to order Printers/Multifunction Devices (MFD)/Plotter have to meet the Indian Standard IS 13252 : Part 1 : 2010 [Title of Indian Standard – Information Technology Equipment – Safety – General Requirements]

11. The schedule of the "Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order, 2012 in S.O.1236(E) was amended. It clarified that since the Multifunction Devices (MFD) are basically printers with additional capabilities like tax, scan, photocopy etc., they are covered under the categories of printers/plotters notified vide Gazette Notification dated 03.10.2012.

12. The clearance of these imported Multi Functional Devices have been further delayed by the respondents on account of invocation of order

dated 18.03.2021 of Ministry of Electronics and Information Technology in S.O.1248(E) which was to come into force at the expiry of six (6) months from the date of its publication with effect from 17.09.2021.

13. The learned Senior Counsel for the petitioner would submit that the issue is now covered by the decision of the Hon'ble Supreme Court rendered in **Delhi Photocopiers** vs. **Commissioner of Customs (GR.5) Chennai II and Others** in SLP(C).No.7756 of 2021 and etc., batch dated 11.08.2021 arising out of a decision of the Hon'ble Division Bench of this Court in the case of **The Commissioner of Customs (Gr.5) and others** vs. **M/s.Best Mega International** dated 04.03.2021 in W.A.No.642 of 2021 and etc., batch, content of which is already extracted in order dated 16.06.2023 of this Court in this case.

14. It is submitted that following the above decision of the Hon'ble Supreme Court, under similar circumstances a batch of writ petitions in W.P.Nos.1393 of 2022 and etc., batch have been allowed by this Court vide order dated 23.03.2022. It is submitted that a similar order was also passed

by a learned Single Bench of this Court on 25.01.2021 in W.P.Nos.8574 of 2020 and etc., batch. There the learned Single Judge had passed the following order:-

"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."

15. The appeal of the Customs Department before the Hon'ble Division Bench of this Court was allowed by an order dated 04.03.2021 in W.A.Nos.642 of 2021 and etc., batch. The said order has been now interfered by the Hon'ble Supreme Court by its order dated 11.08.2021 as referred to supra.

16. The learned Senior Counsel for the petitioner has also placed reliance on the decision of the Telangana High Court at Hyderabad in the case of **R.R.Marketing** vs. **The Union of India and Others**,

W.P.No.28391 of 2019.Wherein, it was held as follows:-

"Heard counsel for petitioner and Sri Namavarapu Rajeshwar Rao, Assistant Solicitor General, for respondents 1 to 4, who seeks time for filing counter.

Prima facie, the Circular No.1/2019 dt.02.05.2019, which was relied upon by the 3rd respondent in the impugned order dt.13.11.2019 (Order-in-Original No.91/2019) cannot be said to have amended the Notification published in the Gazette of India vide S.O.No.2357(F) dt.03.10.2012 notifying the Electric and IT Goods (Requirement of Compulsory Registration) Order, 2012. The said notification only mandated compulsory registration for notified product categories including Printers and Plotters, but did not deal with Multifunction Devices, which by virtue of Circular No.1/2019 dt.02.05.2019 are now treated in the category of Printers and Plotters notified under the above order attracting the requirement of compulsory registration.

Prima facie, in our view the Statutory Notification can only be amended by another Statutory Notification and not by a clarificatory circular, such as Circular No.1/2019 dt.02.05.2019.

Therefore, there shall be interim direction to respondents 2 t o 4 to release MFDs imported vide Bill of Entry No.4260719 dt. 29.07.2019 and Bill of Entry No.4690645 dt.29.08.2019, respectively, on payment of duty within a period of two (02) weeks from today;

List on 18.02.2020 for counter of respondents"

17. Defending the Impugned Order, the learned Senior Standing Counsel for the respondents would submit that the imports were made after the amendment came into force with effect from 17.09.2021. The date of presentation of the Bill of Entries that is relevant and not the Bill of Lading at the port of export from the foreign country.

18. In this connection, the learned Senior Standing Counsel for the respondent has relied on the decision of the Hon'ble Supreme Court in the following cases:-

i. ***D.C.M and Another** vs. **Union of India and Another**, 1995 Supp (3) Supreme Court Cases 223;*
ii. ***Bharat Surfactants (Private) Limited and Another** vs. **Union of India and Another**, (1989) 4 SCC 21*

19. There is a chequered history in so far as import of second hand used printers and Multi Function Devices are concerned. Notifications/Circulars have been issued by the Ministry of Electronics and Information Technology (MeiTy) under the provisions of the Bureau of

Indian Standards Act, 2016 (Formerly Bureau of Indian Standards Act, 1986) and notification issued by the Ministry of Commerce and Industry under the provisions of the Foreign Trade (Development and Regulation Act), 1992.

20. By Electronic and Information Technology Goods (Requirements for Compulsory Registration) Order 2012 vide Notification dated 07.09.2012 in S.O.2357(E), manufacture, storage, sale and distribution, etc., of goods as specified in Column 2 to the schedule to the above Order were prohibited if they did not conform to the Specified standard or do not bear the words "self declaration-conforming to IS (Relevant Indian Standard mentioned in Column (3) of the schedule) on such goods after obtaining the Registration from the Bureau.

21. The only exception that provided was for the goods meant for export under proviso to Sub-Rule (1) to Rule 3 to Electronic and Information

Technology Goods (Requirements for Compulsory Registration) Order 2012 vide Notification dated 07.09.2012 in S.O.2357(E). It reads as under:-

> *"3: Prohibition regarding manufacture, storage, sale and distribution etc., of goods.*
>
> *3(1) No person shall by himself or through any person on his behalf manufacture or store for sale, import, sell or distribute Goods which do not conform to the Specified Standard and do not bear the words "Self declaration – Conforming to IS (Relevant Indian Standard mentioned in column (3) of the Schedule) on such Goods after obtaining Registration from the Bureau:*
>
> ***Provided that nothing in this Order shall apply in relation to manufacture of Goods meant for export."***

22. Sub-rule 2 to Rule 3 to the aforesaid Order reads as follows:-

> "***2. The substandard or defective Goods which do not conform to the Specified Standard mentioned in column (3) of the Schedule shall be deformed beyond use by the manufacturer and disposed off as scrap"***

23. Sl.No.7 to the Schedule to Electronic and Information Technology Goods (Requirements for Compulsory Registration) Order 2012 vide Notification dated 07.09.2012 in S.O.2357(E) reads as under:-

Sl.No. (1)	Product (2)	Indian Standard Number (3)	Title of Indian Standard (4)
7	Printers, Plotters	IS 13252:2003	Information Technology Equipment-Safety-General Requirements.

24. The above Notification was to come into force at the expiry of six (6) months from the date of its publication in the Official Gazette.

25. By Notification dated 20.03.213 in S.O.822(E), the Central Government under the Ministry of Information and Technology, extended the time period for bringing the Electronics and Information and Technology Goods (Requirements for Compulsory Registration) Order, 2012 as announced vide Notification dated 07.09.2012 in S.O.2357(E).

26. The Central Government under the Ministry of Information and Technology vide Notification dated 20.03.213 in S.O.822(E) also clarified that all products manufactured or imported before the notified date of coming into force i.e., before 3rd July 2013 in S.O.822(E) shall not be covered by the provisions of the order. It also gave an additional period of three months for the manufacturing units to comply with the requirements of the Order for Electronics and IT Goods (Requirements for Compulsory

Registration), Order, 2012, of MeiTy (invoking under BIS Act, 1987) dated 07.09.2012 by 04.07.2013 subject to certain conditions. These notifications were issued by the Ministry of Communication and Information Technology (Department of Electronics and Information Technology) in the exercise of powers conferred under Section 10(1)(p) of the Bureau of Indian Standards Act, 1986.

27. By exercising the same power, the Central Government viz., the Ministry of Electronics and Information Technology (Department of Electronics and Information Technology) (IPHW Division) notified few other items to the Schedule Notification dated 07.09.2012 vide Notification dated 01.04.2020 in S.O.1236 (E). In paragraph 2 of Notification dated 01.04.2020 in S.O.1236 (E), it was stated as follows:-

> ***"Since the Multifunction Devices (MFDs) are basically printers with additional capabilities like Fax, Scan, Photocopy etc., thus, it is clarified that they are covered under the category of Printers/Plotters notified vide Gazette Notification dated 3rd October 2012. The other provisions of the aforesaid Gazette notification dated 3rd October 2012 would apply as before."***

28. Thus, it was clarified that Multi Function Devices were covered under the above mentioned Order which was notified vide Gazette Notification dated 03.10.2012.

29. This notification was subject matter of SLP(C).No.7756 of 2021 and etc., batch, wherein the Hon'ble Supreme Court has passed an interim order dated 11.08.2021 and allowed provisional clearance, content of which has been extracted above in Pargarph 3 of this Order.

30. Meanwhile, Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order, 2012 was replaced by Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order, 2021 vide Order dated 18.03.2021 in S.O.1248(E) of Ministry of Electronics and Information Technology, Central Government (hereinafter referred to as Order, 2021) issued under Section 25(3) of the Bureau of Indian Standards Act, 2006.

31. Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order, 2021 vide order dated 18.03.2021 in S.O.1248(E) Ministry of Electronics and Information Technology, Central Government was to come into force within six (6) months of its publication i.e., from 18.09.2021.

32. Thus, on the date of Bills of Entry dated 23.09.2021, Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order, 2021 was in force. As an importer, the petitioner was expected to be aware of Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order, 2021 and the risk associated with imports based on Bill of Lading dated 13.09.2021.

33. Under Order 2021, Printers, Multi-Function Devices (MFD), Plotters are specified in Sl.No.7 to the Schedule which reads as under:-

S.No	**Goods or articles**	**Indian Standard**	**Title of Indian Standard**
(1)	**(2)**	**(3)**	**(4)**
7.	Printers/Multi-Function Devices (MFD) / Plotters	IS 13252 : Part 1 : 2010	Information Technology Equipment – Safety – General

			Requirements

34. Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order, 2021 vide Order dated 18.03.2021 in S.O.1248(E) was amended by Ministry of Electronics and Information Technology, Central Government vide Notification dated 01.07.2021 bearing reference: S.O.2844(E). It introduced Rule 6,7 & 8 to Order 21.

35. As far as manufacturers are concerned, Rule 6 was added into Order 2021. It deferred the application of the order by six months for goods manufactured at any new location within the territory of India. Under Rule 7, a transition period of three months from the date of the order coming into force of the Order was contemplated for a particular products category as specified. The benefit was available for foreign manufacturing unit having liaison office of branch office located in India for affixing Standard Mark at the ports which are already having registration number from the Bureau for clearance of goods from customs.

36. Rule 8 introduced exemption for Highly Specialized Equipments (HSE). The aforesaid amendment dated 01.07.2021 also prescribed the criteria for determining Highly Specialized Equipments. Rule 7 and 8 to

Order 2021 as amended vide Notification dated 01.07.2021 in S.O.2844(E) which reads as under:-

7. Labeling at Custom Ports	***8. Exemption for Highly Specialized Equipment (HSE)***
For all the product categories notified under the "Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2021", a transition period of three months (max), from the date of coming into effect of the Order for the particular product category, would be available to the representative of the foreign manufacturing unit having liaison office of branch office located in India for affixing Standard Mark at the ports which are already having registration number from the Bureau for clearance of goods from customs	*HSE as per the criteria given below shall stand exempted from the application of this Order provided they are manufactured/imported in less than 100 units per model per year-* *a. Equipment Powered by three phase power supply or* *b. Equipment Powered by single phase power supply with current rating exceeding 16 Ampere or* *c. Equipment with dimensions exceeding 1.5m x 0.8m or* *d. Equipment with weight exceeding 80 Kg*

37. Thus, as far as the Ministry of Communication and Information Technology is concerned there are not only restrictions for manufacturing but also for storage, sale and distribution of the goods specified in the Schedule to 2021. Both with manufacture and import of new products of specified electronic goods have to comply with the standards specified under the Indian Bureau of Indian Standards Act, 2016 and the rules made there under.

38. The point for consideration is:-

i. *Whether the Second hand Multi Function Devices that have been imported by the petitioner are prohibited goods within the meaning of Section 2 (33) of the Customs Act, 1962 read with notification issued by the Ministry of Commerce under the provisions of Foreign Trade (Development and Regulation) Act, 1996 with Foreign Trade Policy amended thereof as mentioned above.*

ii. *Whether the date of Bill of Lading at the port of exportations or the date of filing of the Bill of Entry in India is relevant for determining the goods or restricted goods or prohibited goods for the purpose of Customs Act, 1962.*

39. Under the Foreign Trade Policy Imports and Exports are 'Free'

except when imports are regulated by way of ‘prohibition’, ‘restriction’ or traded exclusively through State Trading Enterprises (STEs)’ as laid down in Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and imports.

40. Imports were made under the two Bill of Entries dated 23.09.2021 covered by Bill of Lading 13.09.2021 after Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2021 had come into force.

41. If date of Bill of Lading is to be basis for determining the imports made by the petitioner, imports were to be governed by Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 as per the decision of the Hon'ble Supreme Court rendered in **Delhi Photocopiers** vs. **Commissioner of Customs (Gr.5) Chennai II and Others** in SLP (C) No.7565 of 2021 dated 11.08.2021 Standard prescribed is applicable only for imports of new goods specified in the schedule or manufacture of the goods specified in the schedule. It does not deal with import of Second Hand Goods. Exemption under Rule 8 of Electronics and Information Technology Goods (Requirement of Compulsory Registration)

Order, 2021 is for Highly Specialized Equipment (HSE). It is applicable only to Highly Specialized Equipment (HSE) as defined therein. However, it will apply only to new unused goods and not to second use multi function device such as printers and plotters.

42. The Second Hand Multi Function Devices are not governed by the provisions of the aforesaid Order. Although there is no express reference to import or sale or storage of use multi function devices under the Commerce Ministry in the Foreign Trade Policy issued under Section 5 of the Foreign Trade (Development and Regulation Act), 1992, it has been clarified in paragraph 2.31 that import of photo copiers of machine, digital multi functional copying machine is importable only against authorization.

43. Foreign Trade Policy is issued under Section 5 of the Foreign Trade (Development and Regulation Act), 1992. It is issued once in five years. Foreign Trade Policy once issued is to remain in force for a period of five years.

44. A Foreign Trade Policy is subjected to minor amendments every year with effect from 1st of April of each Financial Year. Foreign Trade Policy 2015-2020 was also amended from time to time. It was last amended

on 07.05.2019 vide Notification No.5/2015-2020 of the Ministry of Commerce. Thereafter, there was no major amendment. Foreign Trade Policy 2015-2020 was replaced by Foreign Trade Policy 2023 with effect from 01.04.2023.

45. There was a Policy Paralysis due to the outbreak of Covid 19 Pandemic. The Foreign Trade Policy 2015-2020 that was to be in force between 1st of April 2015 and 31st of March 2020 was not replaced with a new policy effect from 1st of April 2021.

46. When the imports were made by the petitioner, the Foreign Trade Policy 2015-2020 issued for the period between 1st April 2015 to 31st March 2020 was still in force. The New Foreign Trade Policy for next five year was not announced. New Foreign Trade Policy 2023 was announced only on 31.03.2023 and came into force with effect from 01.04.2023.

47. Under Foreign Trade Policy 2015-2020 the imports were to comply with the domestic laws. Paragraph 2.03 of the Foreign Trade Policy 2015-2020 as in force at the time of import reads as under:-

> *"**2.03 Compliance of Imports with Domestic Laws***
>
> *(a) Domestic Laws/ Rules/ Orders/ Regulations/ technical specifications/ environmental/safety and health norms applicable to domestically produced goods shall apply, mutatis mutandis, to imports, unless specifically exempted.*
>
> *(b) However, Goods to be utilized/ consumed in manufacture of export products, as notified by DGFT, may be exempted from domestic standards/ quality specifications."*

48. Paragraph 2.07 deals with Principles of Restrictions. It reads as under:-

> "***2.07 Principles of Restrictions***
>
> *DGFT may, through a Notification, impose restrictions on export and*
>
> *import, necessary for: -*
>
> *(a) Protection of public morals;*
>
> *(b) Protection of human, animal or plant life or health;*
>
> *(c) Protection of patents, trademarks and copyrights, and the prevention of deceptive practices;*
>
> *(d) Prevention of use of prison labour;*
>
> *(e) Protection of national treasures of artistic, historic or archaeological value;*
>
> *(f) Conservation of exhaustible natural resources;*
>
> *(g) Protection of trade of fissionable material or material from which they are derived;*

(h) Prevention of traffic in arms, ammunition and implements of war

(i) Relating to the importation or exportation of gold or silver."

49. As per Paragraph 2.10 of the Foreign Trade Policy (2015-2020), goods which are importable freely without any 'Restriction' may be imported by any person. However, if such imports require an Authorization, imports are permissible only on actual user condition unless it is specifically dispensed with by DGFT. Paragraph 2.10 of the Foreign Trade Policy reads as under:-

"***2.10 Actual User Condition***

Goods which are importable freely without any 'Restriction' may be imported by any person. However, if such imports require an Authorisation, actual user alone may import such good(s) unless actual user condition is specifically dispensed with by DGFT."

50. Paragraph 2.11 deals with Terms and Conditions of an Authorisation. It reads as under:-

"2.11 Terms and Conditions of an Authorisation

Every Authorisation shall, inter alia, include either all or some of the following terms and conditions (as applicable in terms of the para under which the Authorisation has been issued), in addition to such other conditions as may be specified:-

(a) Description, quantity and value of goods;

(b) Actual User condition (as defined in Chapter 9);

(c) Export Obligation;

(d) Minimum Value addition to be achieved;

(e) Minimum export/import price;

(f) Bank guarantee/ Legal undertaking / Bond with Customs

Authority/RA (as in para 2. 35 of FTP).

(g) Validity period of import/export as specified in Handbook of Procedures.

51. Paragraph 2.12 of Foreign Trade Policy 2015-2020 deals with Clearance of Goods from Customs against Authorisation. It reads as under:-

"*Clearance of Goods from Customs against Authorisation*

Goods already imported / shipped / arrived, in advance, but not cleared from Customs may also be cleared against an Authorisation issued subsequently. However, such goods already imported/shipped/arrived, in advance are first warehoused against Bill of Entry for Warehousing and then cleared for home consumption against an Authorisation issued subsequently. This facility will *however be not available to "restricted" items or items traded through STEs, unless specifically allowed by DGFT."*

52. As per paragraph 2.14 of Foreign Trade Policy 2015-2020, no person can claim an authorization as a right and DGFT or Regional Authority (RA) as the case may be, shall have power to refuse to grant or renew authorization in accordance with provisions of the Foreign Trade Development Regulation Act, 1992 and the Rules made there under. Thus, importer had to comply with the requirements of Foreign Trade Policy as a whole.

53. Under Notification No.36/2015-2020 dated 17.01.2017, the Central Government has notified Indian Trade Classification (Harmonised System) of Import Items, 2017 ITC (HS), 2017. The first schedule to the Import Policy is specified therein. Printing machinery of various description are freely importable as per the first schedule.

54. By an amendment to Paragraph 2.31 of the Foreign Trade Policy 2015-2020, vide Notification No.5/2015-2020 dated 07.05.2019, entry

relating to "**photocopier machines/multi-function print and copying machine**" in Sl.No.1(a)(ii) was deleted and substituted with Sl.No.1(a)(ii) **"refurbished/reconditioned spares of refurbished parts of personal computers/laptops"**.

55. In Notification No.5/2015-2020 dated 07.05.2019, it was also clarified as under:-

> *"**Policy Condition: As under Chapter 84 and 85 of ITC (HS) 2017:***
>
> *The import of Goods (new as well as second hand, whether or not refurbished, repaired or reconditioned) notified under the "Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012, as amended from time to time, is **prohibited** unless they are registered with the Bureau of Indian Standards (BIS) and comply to the 'Labelling Requirements' published by BIS, as amended from time to time', or on specific exemption letter from Ministry of Electronics and Information Technology (Meity) for a particular consignment, as per provisions of Gazette Notification SO No. 3022 dated 11.09.2013.*
>
> *The importer shall re-export such prohibited Goods reaching Customs Ports else the Customs Authorities shall deform the goods beyond use and dispose of the goods as scrap under intimation to MeitY."*

56. Paragraph 2.31(1)(a) of Foreign Trade Policy, 2015-2020 was revised to read as under:-

S. No	Categories of Second Hand Goods	Import Policy	Conditions, if any
I	***Second Hand Capital Goods***		
(a)	*1. Desktop Computers* *2. refurbished/re-conditioned spares of re-furbished parts of Personal Computers/Laptops.* *3. Air conditioners.* *4. Diesel generating sets.*	*Restricted*	*Importable against Authorization*
(b)	*All electronics and IT Goods notified under the Electronics and IT Goods (Requirement of Compulsory Registration) Order, 2012 as amended from time to time*		*1. Importable against Authorization subject to conditions laid down under "Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012, as amended from time to time.* *2. Import of*

			unregistered/non-compliant notified products as in CRO, 2012, as amended from time to time is "prohibited"

57. As per amended Paragraph 2.31 of the Foreign Trade Policy 2015-2020, vide Notification No.5/2015-2020 dated 07.05.2019 import of all electronics and IT Goods notified under the Electronics and IT Goods (Requirement of Compulsory Registration) Order, 2012 as amended from time to time in Sl.No.1(b) to Paragraph 2.31 of the Foreign Trade Policy 2015-2020 was importable against Authorization subject to conditions laid down under "Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012, as amended from time to time. However, import of unregistered/non-compliant notified products as in CRO, 2012, as amended from time to time were "prohibited".

58. Note 2(c) to General Notes regarding Import Policy was

amended simultaneously. Policy Condition No.2 under Chapter 84 of Foreign Trade Policy 2015-2020 was inserted. Policy Condition No.5 under Chapter 85 of ITC (HC) 2017 was also amended vide Notification No.5/2015-2020 dated 07.05.2019. Amended vide Notification No.5/2015-2020 dated 07.05.2019 reads as under:-

Existing General Note No.2(C)	Amended General Note No.2(C)
(C)Import policy for electronics and IT Goods: *The import of Notified Goods under the "Electronics and Information Technology Goods (requirement of Compulsory Registration) Order 2012, as amended from time to time will be allowed subject to registration with the Bureau of Indian Standards (BIS), or on specific exemption letter from Ministry of Electronics and information Technology (MeitY) for a particular consignment as per provisions of Gazette Notification SO No.3022 dated 11.09.2013. Accordingly, import of unregistered/non-compliant notified products as in CRO 2012 as amended as "prohibited"*	***(C)Import policy for Electronics and IT Goods:*** *The import of Goods **(new as well as second hand, whether or not refurbished, repaired or reconditioned)** notified under the "Electronics and information Technology Goods (Requirement of Compulsory Registration) Order 2012 as amended from time to time is **prohibited** unless they are registered with the Bureau of Indian Standards (BIS) and comply to the Labelling Requirements published by BIS, as amended from time to time or on specific exemption letter from Ministry of Electronics and Information Technology (MeitY) for a particular consignment as per provisions of Gazette Notification SO No.3022 dated 11.09.2013."*

Import consignments without valid registration with BIS shall be re-exported by the importer failing which Customs shall deform the goods and dispose them as scrap under intimation to Meity	*The importer shall re-export such prohibited Goods reaching Customs Ports else the Customs Authorities shall deform the goods beyond use and dispose of the goods as scrap under intimation to MeitY.*

Thus, there is prohibition for import under the policy.

59. Under the Foreign Trade Policy 2015-2020, that was in force till 19.05.2019, import of second hand Photocopier Machines/Digital Multifunction Print & Copying Machines was prohibited and could be imported only against authorization if it complied with the above requirements. After 19.05.2019, its import is prohibited.

60. Thus, all electronic and IT goods notified under The Electronic and Information Technology Goods (Requirement and Compulsory Registration), Order 2012 became prohibited unless:-

i. *they are registered with the Bureau of Indian Standards (BIS); and* *ii. complied with to the 'Labelling Requirements' published by BIS, as amended from time to time', or;*

iii. on specific exemption letter from Ministry of Electronics and Information Technology (Meity) for a particular consignment, as per provisions of Gazette Notification SO No. 3022 dated 11.09.2013

61. Imports were permissible only against Authorisation subject to the conditions laid down under the aforesaid order, as amended from time to time.

62. Import without valid registration under Bureau of Indian Standards (BIS) was to be re-exported by the importer, failing which the Customs Department was to deform the goods and dispose them as scrap as an intimation to Ministry of Electronics and Information Technology.

63. An exception was provided to an importer, who obtains a specific exemption letter from Ministry of Electronics and Information Technology (MeitY) for a particular consignment as per provisions of Gazette Notification SO.No.3022 dated 11.09.2013.

64. The expression “Prohibited Goods” is defined in Section 2(33) of

the Customs Act, 1962. Section 2(33) of the Customs Act, 1962 reads as follows:-

> ***"2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported, have been complied with"***

65. All Electronic and IT Goods notified under the Electronic and IT Goods (Requirements of Compulsory Registration), 2012 as amended from time to time or Second hand Multi Functional Devices including printers are prohibited and were importable only against authorization subject to the condition laid down in the aforesaid Ministry of Electronics and Information Technology from 19.05.2019. The position under Paragraph 2.13 of the New Policy with effect from 01.04.2023 is not different. Under it, imports are restricted wherever an importer complies with the requirement of All Electronic and IT Goods notified under the Electronic and IT Goods (Requirements of Compulsory Registration), 2012. Imports are

prohibited in case of import of unregistered/non-compliant notified products as in CRO, 2012, as amended from time to time is "prohibited".

66. Paragraph 2.31 to Hand Book of Procedure to the Foreign Trade Policy, 2023 notified on 31.03.2023 reads as under:-

Sl. No.	Categories of Second Hand Goods	Import Policy	Conditions, if any
I.	Second Hand Capital Goods	Restricted	Importable against Authorisation
I(a)	i. Desktop Computers; ii.Refurbished/re-conditioned spares of re-furbished parts of personal Computers/Laptops; iii. Air Conditioners; iv. Diesel generating sets		
I(b)	**All eletronics and IT Goods under the Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2012 as amended from time to time**	**Restricted**	**(i) Importable against an authorization subject to conditions laid down under Electronics and IG Goods (Requirements of Compulsory Registration) Order, 2012 as amended from time to time** **(ii) Import of unregistered/non-compliant notified products as in CRO, 2012 as amended from time to time is "Prohibited"**
I(c)	Refurbished/re-conditioned spares of Capital Goods	Free	Subject to production of Chartered Engineer certificate to the effect that such spares have at least 80% residual life of original spare

I(d)	All other second-hand capital goods [other then (a) (b) & © above]	Free	
II.	Second Hand Goods other than capital goods	Restricted	Importable against Authorization
III.	Second Hand Goods imported for the purpose of repair/refurbishing/re-conditioning or re-engineering	Free	Subject to condition that waste generated during the repair/refurbishing of imported items is treated as per domestic Laws/Rules/Orders/Regulations/ technical specifications/Environmental/safety and health norms and the imported item is re-exported back as per the Customs Notification.

67. Thus, there is no doubt that the second hand and used multifunction printers/devices imported by the petitioner were prohibited under the provisions of the Foreign Trade Policy 2015-2020 as in force on the date of the respective Bill of leading on 13.09.2021 and on the date of filing of the respective Bill of Entries on 23.09.2021 for home clearance. However, there is relaxation under the new policy.

68. At the same time, it has to be kept in Section 11 of the mind that Customs Act, 1962 was amended by the Finance Act, 2018 (Act 13 of 2018). The Finance Act, 2018 (Act 13 of 2018) has been notified with effect from 29.03.2018. However, amendment to Section 11(3) of the Customs Act, 1962 as amended by the Finance Act, 2018 (Act 13 of 2018) has not been given effect to. This is evident from a reading of Section 59 of Finance

Act, 2018 (Act 13 of 2018), which reads as under:-

"Extract from the Finance Act, 2018
No.13 of 2018
[28th March, 2018]

Section 59. Amendment of Section 11.

> ***In the Customs Act, in Section 11,*** *after sub-section (2), the following sub-section shall be inserted with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, namely:-*
>
> *(3) Any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.".*

69. Thus, there is a drift that any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only, if such prohibition or restriction or obligation is notified under the provisions of the Customs Act,

1962, subject to such exceptions, modifications or adaptations as the Central Government deems fit.

70. If Section 11(3) of the Customs Act, 1962 as amended by Section 59 of Finance Act, 2018 (No.13 of 2018) comes into force for all practical purpose restrictions and prohibitions under the Foreign Trade Policy 2015-2020 issued under the section 5 of the Foreign Trade (Development And Regulation), 1992 and under the Electronic and Information Technology Goods (Requirement of Compulsory Registration) 2012 as notified by Notification dated 07.09.2012 in SO.No.2357(E) and Electronic and Information Technology Goods (Requirement of Compulsory Registration) 2021 as notified by Notification dated 18.3.2021 in S.O 1428 (E) of the Ministry of Electronics and Information Technology will be redundant, unless a corresponding notification was issued under Section 11 (3) of the Customs Act, 1962.

71. The 3 wings of the Central Government have to worked in tandem and issue Notifications to implement the Policy of the Government. The restrictions and prohibitions under any of the other two of the Ministry are

not sufficient. It is therefore open for the Central Government under the Finance Ministry to issue suitable notification to either prohibit or restrict the import.

72. The Hon'ble Supreme Court has ordered release of similar consignments in the case of **Delhi Photocopiers** vs. **The Commissioner of Customs** vide order dated 11.08.2021 in S.L.P.(c).No.7565 of 2021. The goods were prohibited. They were ordered goods to be released under Section 125 of the Customs Act, 1962. Notification dated 01.04.2020 amending the Schedule of the "Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order, 2012 has merely clarified Multifunction Devices (MFDs) are basically printers with additional capabilities like Fax, Scan, Photocopy etc. Thus, it was clarified that they are covered under the category of Printers/Ploters notified vide Gazette Notification dated 3rd October 2012.

73. The subsequent amendment by way of clarificatory Notification dated 18.03.2021 to Ministry of Electronic and Information Technology in S.O.1248(E) merely added Printers/ Multi-Function Devices (MFD)/Plotters

within the purview of the restrictions. The imports were althrough prohibited but weres allowed to be cleared on payment of appropriate redemption fine.

74. Therefore, these goods above can be ordered to be confiscated and released on payment of redemption fine as discretion is vested for the officer to release the goods under Section 125 of the Customs Act.

75. Therefore, the respective bills of entries are directed to be assessed provisionally and the imported consignments of Multifunction Devices (MFDs) are directed to be released on payment of appropriate Customs duty and the production of suitable security to cover any redemption fine which may be imposed in an appropriate adjudication proceeding against the petitioner.

76. The imported consignments may be allowed to be cleared within a period of thirty (30) days from the date of receipt of a copy of this order subject to the petitioner providing suitable securities in the form of Bank Guarantee to cover the redemption fine that may be imposed on the petitioner for importing prohibited goods.

77. The writ petition stands allowed with the above observations. No

costs. Consequently, connected miscellaneous petition is closed.

18.12.2023

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C. SARAVANAN, J.

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To

1. The Additional Commissioner of Customs (Concor ICD),
   No.60, Rajaji Salai, Customs House,
   Chennai – 600 001.

2. The Deputy/Asst. Commissioner of Customs (Concor ICD),
   Tondiarpet, Ennore High Road,
   Chennai – 600 019.

W.P.No.2265 of 2022
and
W.M.P.No.2438 of 2022