IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2023

CORAM :

The HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. Nos.4421, 4424 and 4425 of 2023

M/s.Raw Enterprises,
Rep. by its Proprietor,
H.Rawuther ... Petitioner in all W.P.s

vs

1. The Principal Commissioner of Customs,
Chennai - VII Commissionerate,
New Custom House,
Air Cargo Complex,
Meenambakkam,
Chennai - 600 027.

2. The Additional Commissioner of Customs,
Chennai - VII Commissionerate,
New Custom House,
Air Cargo Complex,
Meenambakkam,
Chennai - 600 027.

3. The Deputy Commissioner of Customs,
Chennai - VII Commissionerate,
New Custom House,
Air Cargo Complex,
Meenambakkam,
Chennai - 600 027.

4. The Additional Director General,
Directorate of Revenue Intelligence,
No.27, G.N. Chetty Road,
T. Nagar,
Chennai 600 017. ... Respondents
in all W.P.s

Prayer in W.P. No.4421 of 2023 : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents, more particularly the 2nd respondent to release the goods viz., "Chinese Mobile LCD with Touch (unbranded), imported vide Bill of Entry No.3077023, dated 29.10.2022 in terms of Section 110A of the Customs Act, 1962 and issuance of a Detention Certificate for waiver of Demurrage Charges, in terms of Regulation 6(1)(I) of the Handling of Cargo in Customs Areas Regulations 2009.

Prayer in W.P. No.4424 of 2023 : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents more particularly the 2nd respondent to release the goods viz., "Chinese Mobile LCD with Touch (unbranded), China Mobile Back Case (Unbranded), Ringer for Mobile Spares (unbranded), Nozzle (Unbranded)" imported vide Bill of Entry No.4275894, dated 20.01.2023 in terms of Section 110A of the Customs Act, 1962 and issuance of a Detention certificate for waiver of Demurrage Charges, in terms of Regulation 6(1)(I) of the Handling of Cargo in Customs Areas Regulations 2009.

Prayer in W.P. No.4425 of 2023 : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents more particularly the 2nd respondent to release the goods viz., "Chinese Mobile LCD with Touch (unbranded), imported vide Bill of Entry No.4275864, dated 20.01.2023 in terms of Section 110A of the Customs Act, 1962 and issuance of a Detention certificate for waiver of Demurrage Charges, in terms of Regulation 6(1)(I) of the Handling of Cargo in Customs Areas Regulations 2009.

For Petitioner in all W.P.s	:	Mr.B.Satish Sundar
For Respondents in all W.P.s	:	Mr.S.Gurumoorthy for R1 to R3 Mr.V.Sundareswaran, Senior Panel Counsel for R4

COMMON ORDER

The grievance of the petitioner in these writ petitions is that their applications seeking for provisional release of goods under Section 110A of the Customs Act, 1962 have not been considered till date, despite several representations having been given. The petitioner's imported goods which arrived at Airport, Chennai in the month of July 2022 were not released to the petitioner. Under those circumstances, the petitioner claims that they have submitted representations on 06.02.2023 and 24.01.2023 under Section 110A of the Customs Act, 1962 seeking for provisional release of the imported goods. Since the representations filed under Section 110A of the Customs Act 1962 have not been considered, till date, they have filed these writ petitions.

2. Heard Mr.B.Satish Sundar, learned counsel for the petitioner, Mr.S.Gurumoorthy, learned counsel for the respondents 1 to 3 in all writ petitions and Mr.V.Sundareswaran, learned Senior Panel Counsel for the 4th respondent in all writ petitions.

3. A counter affidavit has also been filed by the 4th respondent stating that the petitioner has not disclosed the true value of the imported goods and the matter is under investigation. It is further stated that the documents submitted by the petitioner are also forged documents. The Bills of Entry were filed by the petitioner only after the goods arrived at Airport, Chennai in the month of July 2022. According to the petitioner, the imported goods pertaining to the subject matter of these writ petitions are under investigation by the 4th respondent.

4. However, when Section 110A of the Customs Act, 1962 enables any person seeking for provisional release of goods, necessarily, the

respondents will have to take a decision on the petitioner's application seeking for provisional release as per the said section.

5. Admittedly, no final orders have been passed by the respondents with regard to the requests made by the petitioner seeking for provisional release of the imported goods by its representations, dated 06.02.2023 and 24.01.2023.

6. The learned Standing Counsel for the respondents would submit that the representations dated 06.02.2023 and 24.01.2023 submitted by the petitioner are not in accordance with the format prescribed under Section 110A of the Customs Act, 1962 and only when an application seeking for provisional release of goods, is filed as per the said provision the respondents will be in a position to consider the same on merits and in accordance with law. He would also submit that the petitioner has not produced the necessary documents including the documentary evidence to substantiate the value of the imported goods.

7. However, the same is disputed by the learned counsel for the petitioner, who would submit that the Bills of Entry filed by the

petitioner before the Customs Authorities will disclose the value of the imported goods. He would also submit that having submitted the required documents, the respondents ought to have released the goods to the petitioner and without passing any seizure or detention order, the respondents have arbitrarily and illegally withheld the imported goods and not released the same to the petitioner till date.

8. This Court is not expressing any opinion on the merits of the matter. However, necessarily the respondents will have to consider the petitioner's representation seeking for provisional release of the imported goods and decide the said representation on merits and in accordance with law, within a time frame to be fixed by this Court.

9. However, since the respondents contend that the representations submitted by the petitioner seeking for provisional release of the goods is not in accordance with the format prescribed, no prejudice would be caused to the petitioner, if they are directed to submit a fresh application under Section 110A of the Customs Act, 1962 seeking for provisional release of the imported goods and a direction is issued to the respondents to consider the same on merits and in accordance with law, within a time frame to be fixed by this Court.

10. For the foregoing reasons, this Court directs the petitioner in these writ petitions to submit a fresh application in respect of the following Bills of Entry,

Bill of Entry No. and dated

1) 3077023, dated 29.10.2022 (W.P. No.4421 of 2023)

2) 4275894, dated 20.01.2023 (W.P. No.4424 of 2023)

3) 4275864, dated 20.01.2023 (W.P. No.4425 of 2023)

seeking for release of the respective imported goods to the 1st respondent, within a period of one week from the date of receipt of a copy of this order. On receipt of the said application, the 1st respondent shall pass final orders on merits and in accordance with law, within a period of two weeks thereafter. The petitioner is also permitted to produce all necessary documents along with the application to the respondents and the respondents shall consider the same on merits while passing final orders.

11. With the aforesaid directions, these writ petitions are disposed of. No costs.

21.02.2023

Note : Issue order copy on 22.02.2023
Index:Yes/No
Neutral Citation:Yes/No
vsi2

ABDUL QUDDHOSE, J.

vsi2

To
1. The Principal Commissioner of Customs,
Chennai - VII Commissionerate,
New Custom House,
Air Cargo Complex,
Meenambakkam,
Chennai - 600 027.

2. The Additional Commissioner of Customs,
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