

16 09.04.2024
AN Ct. No. 01
RP

MAT 644 of 2024
with
IA No. CAN 1 of 2024

The Commissioner of Customs (Port), Kolkata
Vs.
M/s. P. K. Copier Solutions & ors.

Mr. Kaushik Dey
Mr. Tapan Bhanja

... For the Appellant

Mr. T. M. Siddiqui, Id. A.G.P.
Mr. Tanmoy Chakraborty

... For the Respondent

1. The appeal filed by the Department is directed against the order dated 19.03.2024 passed in WPA 6206 of 2024 by which the learned writ court directed provisional release of the case which were declared in the Bill of Entry as Multifunctional Devices (MFD). The question is whether the goods are freely importable or there is restriction or prohibition in the import of these goods.

2. Learned counsel for the appellant has produced a compilation consisting of the Foreign Trade Policy, 2023, the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 and Electronics & Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 and the notification of the Ministry of Electronics & Information Technology dated 01.07.2021. Reliance has also been placed on the decision of the Division Bench of the Madras High Court reported in (2019) 367 ELT 920 (Madras) and (2021) 377 ELT 721 (Madras).

3. Learned counsel appearing for the respondent

placed reliance on the decision of the Division Bench of the High Court for the State of Telengana in W.P. 2014 of 2024 dated 08.02.2024 and the order passed by the learned Single Judge of High Court of Madras in W.P. 29673 of 2023 dated 23.11.2023. Thus, the legal issue involved in the case has to be considered before directing provisional release of the goods.

4. Therefore, we are of the view that the order under appeal has to be set aside and the matter should be remanded back to the learned Single Judge so that the appellant department will have an opportunity to file their affidavit-in-opposition and thereafter the writ petition should be heard and decided on merits. Learned counsel for the parties are directed to exchange compilation case law with each other.

5. Hence, in the result, both the appeal and the connected application stand **allowed** and the order passed in the writ petition is set aside and the writ petition is restored to its file and number of the learned Single Judge of this Court to be heard and decided on merits and in accordance with law.

6. Affidavit-in-opposition is directed to be filed within two weeks from date, reply thereto, if any, be filed within three weeks thereafter. List the matter before the learned Single Judge in the week commencing on and from 06.05.2024.

(T. S. Sivagnanam)
(Chief Justice)

(Hiranmay Bhattacharyya, J.)