

14.05.2024
Item Nos.10-13
gd/ssd

MAT/674/2024
IA NO: CAN/1/2024
Commissioner of Customs (Port) And Ors.
VS
M/s Atul Automation Pvt. Ltd.

with
MAT/675/2024
IA NO: CAN/1/2024
Commissioner of Customs (Port) And Ors.
VS
M/s Atul Automation Pvt. Ltd.

with
MAT/676/2024
IA NO: CAN/1/2024
Commissioner of Customs (Port) And Ors.
VS
M/s Atul Automation Pvt. Ltd.

with
MAT/677/2024
IA NO: CAN/1/2024
Commissioner of Customs (Port) And Ors.
VS
M/s Atul Automation Pvt. Ltd.

Mr. Kausik Dey,
Ms. Aishwarya Rajyashree,
Mr. Chandra Gupta Kamal
..for the Appellants.

Mr. Smarajit Roychowdhury,
Mr. Tapan Bhanja
..for the Union of India.

Mr. Shovendu Banerjee,
Mr. Soumyajit Mishra
..for the Respondents.

1. We have heard the learned advocates for either
of the parties.

2. It cannot be disputed that the issue involved in
this appeal which is squarely covered by the decision
passed by this court in MAT 644 of 2024 by which the

appeal filed by the department was allowed. The order which reads as under:

- “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.”

3. The department is directed to file affidavit-in-opposition within a period of three weeks from date; reply, if any, be filed within three weeks thereafter.

4. Let these matters be listed before the appropriate Single Bench after Vacation.

5. After we have dictated the above order, the learned advocate for the respondent/writ petitioner submitted that the writ petitioner has the BIS certification. This issue can be canvassed in the writ petition.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)