IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.05.2024

CORAM :

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P Nos.11950, 11951, 11957, 11965, 11968, 11974, 11977, 12355, 12356, 12358, 12360, 12365, 12368, 12188, 12189, 14050, 14053, 14059, 14061, 14063 of 2024
and W.M.P.Nos.13038, 13039, 13043, 13047, 13051, 13060, 13065, 13486, 13484, 13479, 13475, 13488, 13489, 13281, 13282, 15231, 15237, 15241, 15242, 15243 of 2024

W.P No.11950 of 2024:

M/s.Unistar Enterprises,
88, Rana Pratap Market,
Karol Bagh, New Delhi – 110 005.
Rep. by its Authorized Signatory, Mr.Ankit Khetterpal.

.. Petitioner

Vs.

1.The Commissioner of Customs (Chennai II) Import,
Customs House,
No.60, Rajaji Salai,
Chennai – 600 010.

2.The Additional Commissioner of Customs (Gr.5),
Customs House,
No.60, Rajaji Salai,
Chennai – 600 010.

3.The Deputy Commissioner of Customs (Gr.5),
Customs House,
No.60, Rajaji Salai,
Chennai – 600 010. ..Respondents

PRAYER : Writ Petition has been filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 -3 herein forthwith to allow Provisional Release of 249 Units the various models of Secondhand Highly Specialized Equipments – Digital Multifunction Print & Copying Machines, imported by the Petitioner and which have been submitted for clearance before the Respondents vide Bill of Entry No.2669281 dated 21.03.2024 on execution of Simple Bond of 100% of enhanced value of goods and also payment of applicable total GST (Customs Duty is exempted) on the enhanced value, as appraised by the Chartered Engineers M/s. APGM Engineering Services Pvt., Ltd., in their report No.APGM/2324/A247 dated 29.03.2024.

For Petitioner : Mr.Nithiyesh Natraj
for Mr.Akash Srinanda V

For Respondent : Mr.B.Arvind Srevatsa
Junior Standing Counsel

COMMON ORDER

The petitioners seek issuance of Writ of Mandamus to release of various models of second hand highly specialized equipment – digital multifunction print copy and scanning Machines imported by the petitioner.

2.According to the petitioners, the said items have been submitted for clearance before the respondent. The petitioners have also expressed their willingness to pay the applicable total duty on the enhanced value which has been assessed by the Chartered Engineers, M/S.APGM Engineering Services Pvt., Ltd., filed vide report in certificate No.APGM/2324/A247 dated 29.03.2024, etc.

3.I have heard Mr.Nithyaesh Nataraj, learned counsel for the petitioners in all the writ petitions and Mr.B.Arvind Sreevatsa, Junior Standing Counsel for the respondents in all the above writ petitions.

4.The learned counsel for the petitioner would invite my attention to the order passed by this Court in W.P. Nos.1671 of 2024 batch dated 12.02.2024, where this Court has disposed of the Writ Petitions on the following conditions:

"3.The operative portion of the order of this Court in the above mentioned batch is as under:

(i) W.P.No.28817 and 30506 of 2023 are disposed of directing the petitioners to cause reply to the show cause notice issued to them and the respondent department is directed to consider the same and pass necessary orders within a stipulated time. As far as release of goods is concerned, the same shall be released provisionally.

(ii) W.P.Nos.29673, 27544, 27547, 27548, 28115, 28119, 29678, 29680, 29684 of 2023 & 30490, 30492, 30495, 30496, 30498, 30500, 30501 & 30503 of 2023 are allowed and the following order is passed:

(a) 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 (3) weeks thereafter.

(b) For payment of such duty, quantification shall be made by the Customs forthwith within one (1) weeks 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 entirely, the goods shall be released as indicated above at the outer limit of three (3) weeks.

(c) 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.

(d) 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 respondent objectively."

5.The learned counsel for the respondent would also submit that the Foreign Trade Policy-2023 has suffered an amendment in paragraph No.2.31 and therefore would contend that the Writ Petition cannot be allowed.

6.On going through the pre-amendment, paragraph No.2.31 and post amendment in paragraph No.2.31, I do not find the same affecting the issue involved in these Writ Petitions in any manner. Hence, I am inclined to follow the earlier order passed by this Court in W.P. Nos.29673 of 2023 batch dated 23.11.2023, which has been subsequently followed by this Court in W.P. Nos.1671 of 2024 batch dated 12.02.2024.

7.In view of the above, these Writ Petitions are disposed of with the following directions.

(i) The respective petitioners shall pay the applicable enhanced duty as assessed by the Chartered Engineer vide the respective reports / certificates, within a period of four weeks from the date of receipt of the copy of the order.

(ii) On payment of such amount, the respondent is directed to release the goods without any further conditions, within a period of three weeks thereafter.

(iii) It is made clear that this order does not stand in the way of the Respondent to conduct further proceedings including any adjudication which may be required, in the manner known to law, of course after affording a fair and reasonable opportunity.

(iv) Connected Writ Miscellaneous Petitions are closed. There shall be no order as to costs.

24.05.2024

Index: Yes/No
Neutral Citation: Yes/No
Speaking Order: Yes/No
rkp

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P.B.BALAJI, J.,
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