IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2024

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.25756, 25762, 25766, 25776, 25781, 25789 and 25791 of 2024
and
W.M.P.Nos. 28133, 28136, 28138, 28151,28154, 28166 and 28167 of 2024

W.P.No.25756 of 2024

M/s.Cann Office Equipment Private Limited,
Room No.9, 2nd Floor,
25/27, Modi Street,
Fort Mumbai - 400 001 ... Petitioner

Vs.

1. The Commissioner of Customs,
(Chennai II) Imports,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

2. The Additional Commissioner of Customs (Gr-5),
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

3. The Deputy Commissioner of Customs (Gr-5),
Custom House, No.60, Rajaji Salai,
Chennai - 600 001. ... Respondent

PRAYER in W.P.No.25756 of 2024: This Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of a Writ of Mandamus, directing the Respondents 1-3 herein forthwith to allow Provisional Release of the consignment of 284 Units of 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 a Bill of Entry No.4324931 dated 04.07.2024 on execution of Simple Bond for 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/2425/A317 dated 10.07.2024.

For Petitioner (in all W.P.'s) : Mr.Vaibhav R.Venkatesh

For Respondents (in all W.P.'s) : Mr.B.Ramana Kumar, Sr.Standing Counsel and Mr.J.Harikrishna Junior Standing Counsel

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COMMON ORDER

These Writ Petitions have been filed to direct the respondents 1 to 3 herein to forthwith release various models of Secondhand Highly Specialized Equipment - Digital Multifunction Print, Copying & Scanning Machines, imported by the petitioners.

2. According to the petitioners, the issue involved in these Writ

Petitions is covered by a judgment of this Court ***dated 18.12.2023*** passed in ***W.P.Nos.35145 of 2023, etc., batch***. Hence, he would urge this Court to pass similar order in the present Writ Petitions also.

3. In the present batch of cases, subsequent to the order passed by this Court, a Notification No.13/2024-25 was issued on 20.05.2024, whereby the import of the subject items were prohibited.

4. Now, the issue before this Court is that whether the petitioners are entitled to the release of the various models of Secondhand Highly Specialized Equipment - Digital Multifunction Print, Copying & Scanning Machines, imported by the petitioners prior to the Notification No.13/2024-25, dated 20.05.2024?

5. The learned counsel for the petitioners would submit that for all practical purposes, the date of reckoning of import would be decided with reference to the date of shipment/dispatch of goods and not the date of arrival of goods at an Indian Port. He refers to the Hand Book of Procedures issued by the DGFT, where Chapter - 1 is pertaining to the Legal Framework and Trade Facilitation. He refers to Clause 2.17, which deals with the date of reckoning of

import/export and reads as follows:-

2.17 Date of reckoning of Import/ Export

(a) Date of reckoning of import is decided with reference to date of shipment / dispatch of goods from supplying country as given in Paragraph 11.11 of Handbook of Procedures and not the date of arrival of goods at an Indian Port.

(b) Date of reckoning of export is decided with reference to date of shipment/ dispatch of goods from India as given in Paragraph 11.12 of Handbook of Procedures. However, for benefit under FTP, Let Export Order (LEO) date shall be the date of reckoning of export.

By referring to the above said Clause, the date of reckoning of import would be the date of shipment/ dispatch of goods. In this regard, the learned counsel for the petitioners refer to Clause 11.11, which reads as follows:-

11.11 Date of shipment/Dispatch in respect of Imports:

Date of shipment/dispatch for imports will be reckoned as under:-

S.No	***Mode of Transportation***	***Date of Shipment / Dispatch***
(i)	*By Sea*	*The date affixed on the Bill of Lading*
(ii)	*By Air*	*Date of relevant Airway Bill provided this represents date on which goods left last airport in the country from which the import is effected.*

Therefore, he would submit that the date of reckoning of import would be the date of Bill of Lading. are well before the impugned notification dated 20.05.2024.

6. In the present cases, the bill of ladings dated 29.04.2024, 19.04.2024, 18.04.2024, 17.04.2024, 22.04.2024 and 15.04.2024 are much before the date of impugned Notification dated 20.05.2024. Therefore, the learned counsel for the petitioners would submit that the said Notification will not be applicable to the petitioners who had already initiated the process of import and the bills of lading were raised.

7. Mr.B.Ramanakumar, learned Senior Standing Counsel would submit that for all practical purposes, the bill of lading would be the date of shipment. He fairly submits that the bills of lading in the present batch of cases would be dated before the date of impugned Notification dated 20.05.2024. Therefore, the order passed by this Court in ***W.P.Nos.35145 of 2024 etc., batch*** in the case of ***M/s.Atul Commodities Private Limited Vs. The Commission of Customs (Chennai II) Import, Chennai and Others,*** dated 18.12.2023, will hold in respect to the present Writ Petitions also.

8. Accordingly, following the above order, this Court is inclined to pass the following order:-

(a) 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 petitioners 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) week from the date of receipt of a copy of this order. On receipt of such quantifications, the payment shall be immediately made by the petitioners and on receipt of the payment in entirety, 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 respondents objectively.

With the above directions, these Writ Petitions are disposed of. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

03.09.2024

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KRISHNAN RAMASAMY, J.

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To

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   Chennai - 600 001.

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