BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)Nos.5583 and 5605 of 2024
and W.M.P.(MD)Nos.5295 and 5311 of 2024

W.P.(MD)No.5583 of 2024

M/s.Growlam Office Private Limited,
A-5/235, Basement,
Paschim Vihar,
New Delhi – 110 063.
Rep. by its Director,
Mr.Ankit Khetterpal ... Petitioner

versus

1. The Commissioner of Customs,
   Custom House,
   Harbour Estate,
   Tuticorin, Tamil Nadu – 600 010.

2. The Additional Commissioner of Customs,
   Custom House,
   Harbour Estate,
   Tuticorin, Tamil Nadu – 600 010.

3. The Deputy Commissioner of Customs,
   Custom House,
   Harbour Estate,
   Tuticorin, Tamil Nadu – 600 010. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Mandamus, to direct the respondents 1-3 herein to forthwith release the various models of Secondhand Highly Specialised Equipment – Digital Multifunction Print, Copying & Scanning Machines, imported by the petitioner and which have been submitted for clearance before the respondents vide Bill of Entry No.9220676 dated 14.12.2023 on payment of applicable total taxes on the enhanced value as assessed by the Chartered Engineer namely one Mr.P.Mohanasundaram in his report vide REF No.101/CE dated 06.01.2024.

For Petitioner : Mr.Vaibhav R.Venkatesh
For Respondents : Mr.N.Dilipkumar

W.P.(MD)No.5605 of 2024

M/s.Radiance Enterprises,
No.27, 5th North Telephone Colony,
Madhavaram Milk Colony,
Chennai – 600 051
Rep. by its Proprietor T.A.Mahesh ... Petitioner

versus

1. The Commissioner of Customs,
   Custom House,
   Harbour Estate,
   Tuticorin, Tamil Nadu – 600 010.

2. The Additional Commissioner of Customs,
   Custom House,
   Harbour Estate,
   Tuticorin, Tamil Nadu – 600 010.

3. The Deputy Commissioner of Customs,
   Custom House,
   Harbour Estate,
   Tuticorin, Tamil Nadu – 600 010. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Mandamus, to direct the respondents 1-3 herein to forthwith release the various models of Secondhand Highly Specialised Equipment – Digital Multifunction Print, Copying & Scanning Machines, imported by the petitioner and which have been submitted for clearance before the respondents vide Bill of Entry No.8985346 dated 29.11.2023 on payment of applicable total taxes on the enhanced value as assessed by the Chartered Engineer namely one Mr.P.Mohanasundaram in his report vide REF No.093/CE dated 19.12.2023.

For Petitioner : Mr.Vaibhav R.Venkatesh
For Respondents : Mr.N.Dilipkumar

COMMON ORDER

The petitioners have imported two consignments of Secondhand Highly Specialized Equipments – Digital Multifunction

Print & Coping Machines of A3 sizes and have approached this Court, seeking a Mandamus, directing the respondents to release the imported goods on payment of applicable taxes.

2. The respondents, by referring to the Notification dated 01.04.2020 and the subsequent Notification dated 18.03.2021, insisted the petitioner to get authorization for release of these goods. According to the respondents, these goods are restricted goods and that can be imported only with authorization.

3. The learned counsel appearing for the petitioners has relied on the order of the Hon'ble Supreme Court passed in Special Leave to Appeal (C) No.7565 of 2021 dated 11.08.2021. He has also relied on the orders passed by this Court in W.P.(MD)Nos.29673 of 2023, etc. (batch cases), dated 23.11.2023, wherein, this Court has permitted the release of goods provisionally on certain conditions. He has also relied on the subsequent order passed by this Court in similar manner, in W.P.Nos.1671 of 2024, etc. (batch cases) dated

12.02.2024.

4. Mr.N.Dilipkumar, learned counsel, who takes notice for the respondents submits that these goods can be imported only after getting the authorization. He further submits that as claimed by the importer, the goods in question is not allowed for clearance till date for want of DGFT Authorisation for import of second hand/used Digital Multifunctional Print & Copying machines that they have not yet submitted to the Department. Even though there is an exemption available for the used/second hand Digital Multifunctional Print & Copying machines/Highly specialised Equipment vide para 8 of MEITY Amendment Order dated 01.07.2021 issued under Notification Number S.O.2844(E) certain conditions were laid under Electronics and IT Goods (Requirement of Compulsory Registration) Order 2012 as amended from time to time, the importer has necessarily to obtain authorization from the DGFT for import of the above used/second hand printing & copying machines. As the importer has so far not submitted the required DGFT Authorisation

for import of second hand/used Digital Multifunctional Print & Copying machines to the department, the clearance of the above import cargo was not allowed to the importer.

5. This Court considered the rival submissions made.

6. This issue has already been decided by this Court in ***W.P.(MD)Nos.29673 of 2023, etc. (batch cases), dated 23.11.2023,*** wherein, this Court has permitted the release of goods by way of provisional release on the following conditions.

> "(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.
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> (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 quantification, 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."

7. Accordingly, these writ petitions are disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

14.03.2024

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NCC : Yes / No.
Index : Yes / No.
Internet : Yes / No.

B.PUGALENDHI, J.

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To

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   Custom House,
   Harbour Estate,
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2. The Additional Commissioner of Customs,
   Custom House,
   Harbour Estate,
   Tuticorin, Tamil Nadu – 600 010.

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