IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2025

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P. No.6981 of 2020 and W.M.P. No.8332 of 2020

M/s.Khivraj Tech Park Pvt. Ltd. .. Petitioner

vs

1.The Assistant Commissioner of Customs,
Export Promotion Division IV,
No.60, Rajaji Salai,
Custom House,
Chennai 600 001.

2.The Branch Manager,
HDFC Bank Ltd.,
No.115, R.K.Salai,
Opp:Kalyani Hospital,
Chennai 600 004. .. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the first respondent in the impugned Notice F.No.S.Misc.40/2018 - EPD - CH - IV dated 11.03.2020 directing the second respondent to invoke the Bank Guarantee and forward the demand draft payable to Commissioner of Customs, Custom House, Chennai with immediate effect, quash the same as it has been issued without adjudication of demand and in violation of the provisions of Section 28 of the Customs Act, 1962.

For Petitioner : Mrs.Radhika Chandra Sekhar

For Respondents : Mr.K.S.Ramasamy,
Senior Standing Counsel for R1

No appearance for R2

ORDER

This writ petition has been filed, challenging the impugned notice dated 11.03.2020 sent by the first respondent to the second respondent/bank calling upon them to enforce the bank guarantees and forward the demand draft payable to the Commissioner of Customs, Customs House, Chennai.

2.The petitioner had earlier furnished four bank guarantees for the capital goods imported by the petitioner. The petitioner claims exemption from payment of customs duty. Since the first respondent refused exemption, they were constrained to furnish four bank guarantees. In the impugned notice dated 11.03.2020, the first respondent has requested the bank to invoke the bank guarantees and forward the demand draft payable to the Commissioner of Customs.

3.The petitioner had earlier filed a writ petition in W.P. No.21623 of

2019 before this Court in respect of the very same cause of action and had claimed exemption from payment of customs duty as per the notification issued by the Customs by treating the date of approval as the date of the Committee Meeting stipulated in the notification. However, the said writ petition came to be dismissed on 24.07.2029. Aggrieved by the dismissal of the writ petition by a learned Single Judge of this Court, a writ appeal was filed before the Division Bench of this Court in W.A. No.955 of 2020. By final order dated 15.04.2025, passed by the Division Bench of this Court, the order dated 24.07.2019 passed by the learned Single Judge of this Court in W.P. No.21623 of 2019 was set aside by the Division Bench of this Court and the writ appeal stood allowed by holding that the petitioner is entitled for exemption from payment of customs duty by applying Exemption Notification No.153 of 1993. In fact, as seen from the order dated 15.04.2025, passed by the Division Bench of this Court in W.A. No.955 of 2020, the learned counsel appearing for the appellant in the said writ appeal was permitted to make a request to take up the connected writ petition filed by the appellant, which is listed today expeditiously.

4.Learned counsel for the petitioner would submit that since the writ appeal has been allowed, the impugned notice in this writ petition has to be quashed and this writ petition will have to be allowed by granting the prayer as sought for in this writ petition.

5.Learned Standing Counsel for the first respondent agrees that the Division Bench has allowed the writ appeal filed by the petitioner in W.A. No.955 of 2020, which is connected to this writ petition. In fact as seen from the earlier proceedings dated 06.09.2024 before this Court, this writ petition was also directed to be tagged along with W.A. No.955 of 2020 when the said writ appeal was pending before the Division Bench of this Court but the same was not tagged along with the writ appeal.

6.Since the writ appeal has been allowed and the petitioner has succeeded and the Division Bench has held that the Exemption Notification applies to the petitioner's case as well, necessarily, this writ petition will have to be allowed. Accordingly, the impugned notice dated 11.03.2020 sent by the first respondent to the second respondent/bank requesting the second respondent/bank to invoke the bank guarantees and forward the demand draft payable to the Commissioner of Customs has to be quashed and the writ petition will have to be allowed.

7.It is brought to the notice of this Court by the learned counsel for the petitioner that the bank guarantees have already been invoked and the proceeds of the same have been credited to the account of the Commissioner of Customs as per the request made under the impugned notice.

8.In view of the same, a direction will have to be issued to the first respondent to refund the money realised out of the four bank guarantees, furnished by the petitioner together with appropriate interest to the petitioner within a stipulated time fixed by this Court.

9.Accordingly, the impugned notice dated 11.03.2020 issued by the first respondent to the second respondent is hereby quashed and this writ petition is allowed by directing the first respondent to refund the sum of money realised by them from and out of the four bank guarantees, which are the subject matter of this writ petition, furnished by the petitioner, together

ABDUL QUDDHOSE, J.

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with appropriate interest if any, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

13.06.2025

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To

1.The Joint Commissioner of Customs
(EODC-EPCG),
Chennai-IV,
Chennai - 600 001.

2.The Assistant Director General of Foreign Trade,
Chennai - 600 006.

3.The Deputy Director General of Foreign Trade,
Chennai - 600 006.

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