IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2025

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No. 21541 of 2025
and
W.M.P. Nos. 24308 and 24309 of 2025

Shri Murugula Shabbir Shaik
Proprietor of M/s.SMR Infra
No.11-1-46/1A, Opposite Medical Hall
Santhosh Nagar, Kandukur
Andhra Pradesh – 523 105. ... Petitioner

Vs.

1.The Additional Commissioner of Customs, (SIIB)
Chennai III Commissionerate
Custom House, No.60, Rajaji Salai
Chennai-600001.

2.The Deputy Commissioner of Customs (SIIB)
Chennai III Commissionerate
Custom House, No.60, Rajaji Salai
Chennai-600001.

3.The Assistant Commissioner of Customs (Group-I)
Custom House, No.60, Rajaji Salai
Chennai-600001.

4.The Deputy Commissioner of Customs (Preventive)
Chennai SEZ & FTWZ
Custom House, No.60, Rajaji Salai
Chennai-600001.

5.The Specified Officer
M/s.NDR Infrastructure Pvt. Ltd. FTWZ
Nandiambakkam Port Road, Nandiambakkam
Chennai-600120. ... Respondents

Prayer : This writ petition has been filed under Article 226 of the Constitution of India, praying for issuance of writ of certiorarified mandamus, to call for the records pertaining to the impugned order dated 03.06.2025 issued by the fourth respondent in File No.GEN/ADJ/ADC/1258/2025-SEZ-FTWZ and quash the same and direct the respondents to permit the clearance of the goods covered by Bill of Entry No.6948032 dated 29.11.2024 within a stipulated time frame.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Mr.M.Santhanaraman, SPC

O R D E R

This writ petition has been filed challenging the impugned order permitting provisional release of the goods passed under Section 110-A of the Customs Act but however according to the petitioner the conditions imposed by the fourth respondent are arbitrary and onerous.

2. The petitioner contends that erroneously by total non-application of mind, the respondents have arbitrarily imposed onerous conditions by relying upon Chapter VIII of the Customs Tariff Act and DGFT Notification, which, according to the petitioner, are not applicable to the petitioner's imported cargo. According to the petitioner, the cargo imported by him is unfit for human consumption as it is going to be used as an animal feed and therefore, customs duty cannot be levied under Chapter VIII of the Customs Tariff Act, which applies only for edible nuts and not for non-edible nuts, which is the cargo imported by the petitioner. According to the petitioner, the conditions imposed under the impugned order are onerous in nature and has been imposed arbitrarily due to the following reasons:-

(a) The cargo of agricultural rejected nuts imported by the petitioner, which is the subject matter of this writ petition, has to be levied customs duty as per Chapter 23 under

Tariff Item No. 2309, which comes under the heading 'Preparations of a Kind Used in Animal Feeding', but, according to the petitioner, the respondents have erroneously by total non-application of mind to the fact that the cargo of agricultural rejected nuts has been imported by the petitioner as a animal feed, improperly held that minimum import price gets attracted by erroneously holding that the cargo of the petitioner will fall under Chapter VIII of the Customs Tariff Act, which according to the petitioner applies only for edible nuts or fruits.

(b) According to the petitioner, the cargo of the petitioner being used for animal feed and there is a separate classification under the Customs Tariff for the same, the respondents have erroneously by total non-application of mind has classified the cargo under Chapter VIII and has imposed onerous conditions under the impugned order for granting provisional release of goods to the petitioner under Section

110-A of the Customs Act.

(c) The cargo imported by the petitioner, which is the subject matter of this writ petition, is valued at Rs.18,30,000/- approximately. Whereas under the impugned order, the respondents have imposed onerous conditions by directing the petitioner to give a Bank Guarantee for a sum of Rs.1,00,00,000/- (Rupees One Crore only) and a bond for a sum of Rs.1,76,80,000/- (Rupees One Crore Seventy Six Lakhs and Eighty Thousand only).

3. The learned counsel for the petitioner also submitted that in similar cases involving imposition of onerous conditions by the Customs Department arbitrarily, this Court had entertained writ petitions and has given benefit to the importer by relaxing the onerous conditions. In support of his submission, the learned counsel for the petitioner has also relied upon various authorities. He would further submit that the circular relied upon in the impugned order has been quashed by the Delhi High Court. The order of

the Delhi High Court quashing the said Circular has also been produced by the petitioner along with the typed set of documents. Therefore, according to the petitioner, erroneously by total non-application of mind, the impugned order has been passed imposing onerous conditions on the petitioner for granting provisional release under Section 110-A of the Customs Act.

4. A detailed counter affidavit has been filed by the respondents 1 to 4 before this Court. According to the respondents, under Section 110-A of the Customs Act, discretion is vested with the Customs Department to impose conditions for granting provisional release of the cargo. According to them, they have rightly classified the subject goods under Chapter VIII of the Customs Tariff Act. They have also stated that without exercising alternate Appellate Statutory remedy available under the Customs Act, the petitioner has filed this writ petition, which is not maintainable.

5. The respondents have also stated that in the previous imports made by the petitioner pertaining to the identical goods, the petitioner had sold it for human consumption.

6. Under Section 110-A of the Customs Act, conditions can be imposed by the Customs Department for granting provisional release of cargo. The discretion is vested with the Customs Department for imposing conditions for provisional release of the cargo. However, the conditions imposed must not be arbitrary and should be reasonable after giving due consideration to the nature of the cargo as well as the previous antecedents of the importer with regard to the imports made earlier by the very same importer involving identical goods.

7. The petitioner has raised various contentions before this Court in support of their case that the conditions imposed for the grant of provisional release under the impugned order is onerous. They include the following :-

(a) minimum import price cannot be fixed for the subject cargo imported by the petitioner, since the Customs Tariff Act specifically provides a Chapter for animal feed, which has not stipulated minimum import price. According to the petitioner, the subject cargo ought to have been classified only under Chapter 23 of sub-heading 2309, but erroneously by total non-application of mind to the same, the respondents have classified the subject cargo under Chapter 8 of the Customs Tariff Act, which is not applicable to the case of the petitioner's cargo. According to the petitioner, Chapter 8 deals with edible nuts alone. According to the petitioner, the goods, which are the subject matter of this writ petition, being unfit for human consumption and they are animal feeds, the respondents ought to have classified the same only under Chapter 23 and not under Chapter 8.

(b) the value of the cargo, which is the subject matter of this writ petition, is Rs.18,30,000/- approximately, according to the petitioner. However, under the impugned order granting provisional release under Section 110-A of the Customs Act, the petitioner has been directed to furnish a Bank Guarantee for a sum of Rs.1,00,00,000/- and a bond for a sum of Rs.1,76,80,000/-, which according to the petitioner are onerous and the said conditions are unsustainable.

(c) the Circular, which has been relied upon under the impugned order has been quashed by the Delhi High Court in the case of ***Additional Director General (Adjudication) -vs- ITS MY NAME PVT. LTD.*** reported in *2021 (375) E.L.T. 545 (Del.)*. Since the Circular has been quashed, the respondents cannot impose onerous conditions on the petitioner as imposed under the impugned order. Therefore, according to the petitioner, onerous conditions have been imposed arbitrarily by total non-application of mind.

(d) as seen from the impugned order dated 03.06.2025, the contentions of the petitioner as raised in this writ petition have not been considered. No personal hearing was also afforded to the petitioner before imposing such onerous conditions that too, when the value of the goods is only Rs.18.30,000/- approximately. According to the petitioner, the respondents ought to have granted personal hearing to the petitioner and ought to have granted an opportunity to the petitioner to submit his explanation as contended in this writ petition and only thereafter, the respondents ought to have imposed conditions for granting provisional release of goods under Section 110-A of the Customs Act. The conditions imposed by the respondents are arbitrary and should be reasonable.

8. On a prima facie consideration, this Court finds that the conditions imposed by the respondents under the impugned order are onerous in view of the fact that the value of the goods, according to the petitioner, is only Rs.18,30,000/- approximately. However, under the impugned order, the

petitioner has been directed to furnish the Bank Guarantee for an amount of Rs.1,00,00,000/- and a bond for an amount of Rs.1,76,80,000/-.

9. It is also to be noted that as seen from the test report dated 31.10.2025 obtained by the respondents pertaining to the subject goods, it reveals that the subject goods are unfit for human consumption. The test report is dated 31.01.2025. When the subject goods are unfit for human consumption, no reasons have been given as to how the said goods will fall under Chapter 8 of the Customs Tariff Act, which is applicable only for edible nuts and not for non-edible nuts.

10. The respondents under the impugned order have also relied upon the guidelines laid down in paragraphs 5.2 and 5.3 of the CBIC Circular No.35/2017–Customs for the purpose of imposing conditions for granting provisional release under Section 110-A of the Customs Act in favour of the petitioner. However, as seen from the Delhi High Court decision, which has been filed as a document along with this writ petition, the aforesaid Circular

has been quashed by the Delhi High Court. When the Circular has been quashed, the said Circular cannot be relied upon by the respondents for imposing conditions for the grant of provisional release under Section 110-A of the Customs Act.

11. All the aforesaid factors have necessarily got to be considered afresh by providing an opportunity of personal hearing to the petitioner as well as submitting his explanation for relaxation of onerous conditions imposed under the impugned order. The goods in question are agricultural rejected nuts and used as an animal feed, which are perishable items. The goods had arrived at Chennai port on 29.11.2024. In view of the fact that the subject goods are perishable in nature and the subject goods had arrived at Chennai port in the month of November 2024 itself, necessarily the respondents will have to reconsider the impugned order at the earliest.

12. This Court considering the nature of the cargo and considering the facts that the said cargo had arrived at Chennai Port on 29.11.2024, deems it

fit to direct the respondents to reconsider the impugned order within a period of three weeks from the date of receipt of a copy of this order. Since the impugned order has been passed without considering the contentions of the petitioner as raised in this writ petition and without affording any personal hearing to the petitioner and also by not providing an opportunity for the petitioner to submit his explanation and has been passed in violation of principles of natural justice, this Court has to necessarily quash the impugned order by remanding the matter back to the fourth respondent for a fresh consideration on merits and in accordance with law.

13. The fourth respondent shall pass final orders after affording one personal hearing to the petitioner and also by permitting the petitioner to submit his explanation reiterating the contentions that have been raised by him before this Court in this writ petition, within a period of three weeks from the date of receipt of a copy of this order.

14. With the aforesaid directions, this writ petition is disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

11.07.2025

Index: Yes/No
Internet: Yes/No
Speaking /Non-speaking order

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To

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ABDUL QUDDHOSE, J.

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