In the High Court of Judicature at Madras

Reserved on	Delivered on :
25.10.2025	**31.10.2025**

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.37033 of 2025
& WMP.Nos.41416 and 41685 of 2025

M/s.Urban Essentials India
Private Limited, rep.by its
Director Shri Ketan Munoth ...Petitioner

Vs

1.The Commissioner of
Customs (Imports), No.60,
Rajaji Salai, Chennai-1.

2.The Additional Commissioner
of Customs, Import
Commissionerate, Group 6,
Customs House, No.60,
Rajaji Salai, Chennai-1. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records in and connected with Order in Original No.114339/2025 dated 22.8.2025 passed by the 1st respondent, quash the same being illegal, arbitrary and in violation of principles of natural justice and consequently direct the respondents to release the goods under Bill of Entry No.2483649 dated 05.6.2025 (earlier filed Bill of Entry No. 9185414 dated 29.3.2025) and 9216468 dated 31.3.2025 declared as sanitary napkins on assessment and grant detention demurrage waiver certificate.

For Petitioner	:	Mr.B.Satish Sundar
For Respondents	:	Mr.M.Santhanaraman, SSC

ORDER

This writ petition has been filed challenging the proceedings of the first respondent dated 22.8.2025 and for a consequential direction to the respondents to release the goods under Bill of Entry dated 05.6.2025, which was earlier filed as Bills of Entry dated 29.3.2025 and dated 31.3.2025 declared as sanitary napkins on assessment and grant detention demurrage waiver certificate.

2. Heard both.

3. The case of the petitioner is as follows :

(i) The petitioner company is registered under the Micro, Small and Medium Enterprise Development Act, 2006 (for short, the MSMED Act). The petitioner company is an importer of essential products like sanitary napkins and other feminine hygiene products. The petitioner has been regularly importing 'plush' brand sanitary napkins for the past six years from their overseas suppliers at China. The supplier complied with ISO standards and topmost quality products were supplied by the supplier and they were accepted worldwide.

(ii) There was no other manufacturer in India using the elevated core technology at the moment and there was no foreseeable adoption of the technology even in the near future. The supplier, who was adopting this technology, made an application dated 27.5.2024 under the Foreign Manufacturers Certification Scheme (FMCS) to the Bureau of Indian Standards (BIS) for registration of the product. However, the said application is still awaiting process and approval.

(iii) The products in question fall under the mandatory BIS namely Schedule A at S.No.1 under the BIS Standard IS 5405 : 2019, which was sought to be enforced through Medical Textiles (Quality Control) Order, 2023. This Order came to be amended vide amendment dated 01.1.2025, by which, the requirement of certification under the BIS was extended upto 01.4.2025 for small and micro enterprises.

(iv) The imports in question were made on 29.3.2025 and 31.3.2025 much before the cut off date given in the said amendment. Through the Medical Textiles (Quality Control) Order, the Ministry of Textiles placed restraints on the manufacturers and importers for goods under the schedule to pass the IS standards. The sanitary napkins should quality IS 5405 : 2019 Standards and should have BIS mark.

(v) The petitioner ordered for the supply of goods on 06.1.2025 and the Bills of Entry were filed on 29.3.2025 and 31.3.2025 much before the deadline date namely 01.4.2025. Certain queries were raised and they were clarified by the petitioner. In fact, the shipment of similar goods and medical textile falling under the Medical Textiles (Quality Control) Order were cleared by various ports in India on the basis of benefit being extended to small and micro enterprises vide amendment dated 01.1.2025.

(vi) Later, alert notice No.2 of 2025 came to be issued and through this notice, a clarification was sought for as to whether the relaxation given in the quality control orders in the form of extended time lines to conform to the standards prescribed in the quality control orders to micro and small enterprises would apply to import and whether the restriction on import would be applicable to all enterprises including the micro and small enterprises from the date of implementation of the quality control order.

(vii) The Department for Promotion of Industry and Internal Trade, New Delhi (DPIIT) issued a clarification dated 19.3.2025 to the Central Board of Indirect Taxes and Customs, New Delhi, by which, a decision was taken to the effect that the additional time provided for the micro and small enterprises would not apply to imports and that it would apply only for the manufacturers in India.

(viii) The petitioner was making repeated representations and demanded the respondents to clear the goods imported. Since no decision was taken on them, W.P.No.20447 of 2025 was filed before this Court seeking to release the goods under the Bills of Entry dated 29.3.2025 and 31.3.2025 and to grant detention demurrage waiver certificate. The said writ petition was disposed of by order dated 27.6.2025 by directing the first respondent to consider the representation of the petitioner dated 27.5.2025 and take a decision within four weeks.

(ix) Thereafter, the petitioner was called upon to attend an inquiry and ultimately, the first respondent passed final orders of adjudication on 22.8.2025 ordering for confiscation of the goods for the BIS infringement under Section 111(d) of the Customs Act, 1962 read with the Foreign Trade (Development and Regulations) Act, 1992 and the Bureau of Indian Standards Act, 2016. Further, the petitioner was allowed to re-export the goods with redemption fine of Rs.10 lakhs under Section 125(1) of the Customs Act, 1962 in lieu of confiscation and penalty was imposed to the tune of Rs.5 lakhs under Section 112(a)(i) of the Customs Act, 1962 since the petitioner had knowingly imported the goods in violation of the BIS Quality Control Order. Aggrieved by that, the present writ petition has been filed before this Court.

4. The Assistant Commissioner of Customs in the office of the first respondent filed a counter on behalf of the respondents wherein they took the following stand :

(i) The imported goods were sanitary napkins and panty liners, which fell squarely under Schedule A of the Medical Textiles (Quality Control) Order, 2024 dated 23.10.2024 as amended vide the Medical

Textiles (Quality Control) Order, 2025 dated 01.1.2025 requiring conformity to IS 5405 : 2019 and use of the BIS Standard Mark. Since the goods that were imported did not conform to the said standard and did not bear the BIS mark, the first respondent proceeded to pass the order of adjudication.

(ii) It was already clarified based on various representations received from various industries and associations that the additional time provided for the micro and small enterprises over and above the date of implementation for large and medium enterprises did not apply to importers. Thus, the letter dated 19.3.2025 was clarificatory in nature as regards the application of the Medical Textiles (Quality Control) Order as amended on 01.1.2025.

(iii) The goods involved were shipped on 17.3.2025 and 22.3.2025 and they arrived in India only in April 2025 well after the commencement date of the Medical Textiles (Quality Control) Order dated 01.1.2025. Hence, the extended time was not available for the importer. Further, though the petitioner had subscribed that the declaration in the Bill of Entry was true and correct, admittedly, they imported the goods in violation of the Medical Textiles (Quality Control) Order and thereby contravened the provisions of the Customs

Act, 1962. Therefore, the impugned order passed by the first respondent for confiscation, re-export, imposing penalty, etc., is well within the authority and power of the first respondent as it was passed after affording an opportunity to the petitioner.

(iv) The petitioner has an alternative remedy of appeal under Section 129A(1) of the Customs Act, 1962 before the Customs, Excise and Service Tax Appellate Tribunal, South Regional Bench, Chennai (CESTAT) and therefore, the above writ petition is not maintainable. Ultimately, the respondents sought for dismissal of this writ petition.

5. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned order.

6. The crux of the issue involved in the present writ petition is as to whether the Medical Textiles (Quality Control) Order, 2024, which was amended with effect from 01.1.2025 and which extended the time line for compliance of the BIS certification upto 01.4.2025 for the micro and small enterprises, will enure to the benefit of the petitioner, which was not, admittedly, a manufacturer, but was an importer of the

goods in question.

7. The learned counsel for the petitioner, by placing reliance upon the order passed by me in ***M/s.Alankar Shipping and Trading Co. (P) Ltd. rep.by its Managing Director Vs. Commissioner of Customs, Import Commissionerate, Chennai-30 [W.P.No.34907 of 2025 dated 25.9.2025]***, submitted that the said order will cover the facts of the present case also.

8. In the said writ petition, the petitioner therein had imported packing plywood from Vietnam and the Additional Commissioner of Customs, Group II, Chennai-30 refused to accept the request made by the petitioner therein relying upon the exemption given for micro enterprises upto 28.8.2025 by stating that the said exemption was not applicable to an importer. While dealing with the issue, I have held as follows :

> *"3. When the matter was taken up for hearing today, the learned Junior Panel Counsel appearing on behalf of the respondents pointed out to the communication of the Government of India, Ministry of Commerce and Industry dated*

19.03.2025, which was made to the Chairman of the Central Board of Indirect Taxes and Customs, Department of Revenue, wherein, at Clause 2, it has been stated as follows:

'2. It is to inform that the DPIIT has introduced several relaxations for easier implementation QCOS, however those are sometimes misused/misinterpreted by few vested interest groups. Therefore, we would like to clarify the following:

a. As regards to imports, the date of implementation indicated in the QCO for the large and medium enterprises should be considered. Only BIS marked products or non-BIS marked products with specific exemption stipulated in the QCO or specific NoC issued by DPIIT may be permitted for imports after the said date.

b. The goods landing at Indian ports on or after the due date must comply with the requirements of Quality Control Order.

c. The additional time period of 6 months and 3 months provided to Micro and Small Enterprises over and above the date of implementation for large and medium enterprises, respectively under the QCOs does not apply to imports. This relaxation is meant for obtaining BIS licenses under the Conformity Assessment Rules of BIS considering their lack of adequate managerial and financial capabilities.'

4. The learned counsel submitted that the relaxation that is sought for by the petitioner for exemption from production of BIS Registration Certificate cannot be sustained, since such relaxation will not apply to imports.

5. This Court has carefully considered the submissions made on either side and also the materials available on record.

6. The short issue that arises for consideration in the present writ petition is as to whether the Plywood and Wooden flush door shutters (Quality Control) Order, 2024, which came into force on 28.02.2025 and which insist for compulsory use of standard marks and provides for a postponement of the effect of the Order to 28.08.2025, can be applied even to an importer and whether it has to confine itself only for domestic production as was intimated by the Government of India to the Chairman of the Central Board of Indirect Taxes and Customs through communication dated 19.03.2025.

7. It is not in dispute that the petitioner being a micro enterprise is recognized under the Micro, Small and Medium Enterprises classification and seeking for exemption granted under the Order postponing the applicability of the provision until 28.08.2025.

8. Insofar as the BIS Registration Certificate is concerned, it is governed under the Bureau of

Indian Standards Act, 2016. This Act defines a person under Section 2(25) as follows:

'(25) "person" means a manufacturer, an importer, a distributor, retailer, seller or lessor of goods or article or provider of service or any other person who uses or applies his name or trade mark or any other distinctive mark on to goods or article or while providing a service, for any consideration or gives goods or article or provides service as prize or gift for commercial purposes including their representative and any person who is engaged in such activities, where the manufacturer, importer, distributor, retailer, seller, lessor or provider of service cannot be identified;'

9. A combined reading of Sections 16 and 17 of the Act also makes it clear that the compulsory use of the standard mark/prohibition to manufacture, sell etc., of goods without standard mark is equally made applicable even to an importer. Therefore, the Act under which the BIS Certificate is granted does not really distinguish between a domestic production and an import. It is also quite clear that this is the statute which mandates BIS Registration Certificate.

10. Reliance is placed upon a communication that was made by the Central Government to the Central Board of Indirect Taxes and Customs. This communication at the best is in the nature of a notification given by the Central Government to *the concerned authority. In this communication, the Central Government has informed that the additional time period of six months and three months provided to Micro and Small Enterprises over and above the date of implementation for Medium and Larger enterprises will not apply to imports. This Notification/Circular is violative of the provisions of the Bureau of Indian Standards Act, 2016. It is now too well settled that the Circular cannot traverse beyond the scope of the enactment which governs the field and if there is any clash, the Circular has to necessarily yield to the enactment.*

11. When the enactment does not distinguish between an importer and a person who does domestic production, the Circular cannot be pressed into service to comeup with such a distinction and restrain the relaxation that was given for enterprises falling under the MSME Classification till 28.08.2025. If this is the ground on which the request made by the petitioner for assessing and clearing the goods, is kept in abeyance, such a ground is not sustainable.

12. In the light of the above, there shall be a direction to the respondents to assess and clear the goods covered under Bill of Entry No.3836297 dated 12.08.2025, without insisting for the BIS Registration Certificate. This process shall be completed, within a period of two weeks from the *date of receipt of copy of this order."*

9. Per contra, the learned Senior Standing Counsel appearing for the respondents submitted that the said order dated 25.9.2025 pertained to different goods and that it would not apply to the facts of the present case.

10. For proper appreciation, the amended Medical Textiles (Quality Control) Order dated 01.1.2025 is extracted as hereunder :

> *"S.O. 04(E).—In exercise of the powers conferred by Sub-Section (1) and (2) of Section 16 read with Sub-Section (3) of Section 25 of the Bureau of Indian Standards Act, 2016 (11 of 2016), the Central Government, after consulting the Bureau of Indian standards, is of the opinion that it is necessary or expedient so to do in the public interest, hereby makes the following Order to amend the Medical Textiles (Quality Control) Order, 2024, namely:-*
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> *1. (1) This Order may be called the Medical Textiles (Quality Control) Amendment Order, 2025.*
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> *(2) It shall come into force from the date of its publication in the Official Gazette.*
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> *2. In the Medical Textiles (Quality Control) Order, 2024, -*

(i) in paragraph 2, before Explanation, the following proviso shall be inserted, namely: -

"Provided that if any manufacturer certified by the Bureau or any manufacturer who has applied for certification to the Bureau for the goods of articles covered under Schedule A of the Principal Order, declares prior to the commencement of the timeline of implementation as mentioned in this Order, under Sub-Section (4) of Section 18 of the Bureau if Indian Standards, Act 2016 (11 of 2016) its old stock products without Bureau of Indian Standards Mark manufactured or imported prior to such commencement, such manufacturer shall be permitted to sell or display of offer to sell such declared stock up to 30th June, 2025.",

(ii) in Schedule A, under column relating to Timeline for implementation, for the entry, the following entry shall be substituted, namely:-

"(a) For Large and Medium Enterprises- 1st January, 2025.

(b) For Small and Micro Enterprises- 1st April, 2025"."

11. A careful reading of the above amended Medical Textiles (Quality Control) Order dated 01.1.2025 would show that it applies only to a manufacturer certified by the Bureau or any manufacturer,

which has applied for certification to the Bureau for the subject goods and if such manufacturer is also a small and micro enterprise, exemption was granted upto 01.4.2025.

12. The subsequent clarification dated 19.3.2025 issued by the DPIIT only confirmed the plain language used in the amended Medical Textiles (Quality Control) Order dated 01.1.2025 and reiterated that this exemption will only apply to domestic manufacturer and not for an importer. The above clarification does not, in any way, contradict the amended Medical Textiles (Quality Control) Order dated 01.1.2025 and it is merely a reiteration of the original amended Notification.

13. Admittedly, in the case in hand, the petitioner is not a manufacturer, but only an importer. The exemption that was granted for the small and micro enterprises was not based on the goods, but was only based on the important factor that the concerned enterprise must be a manufacturer. If the enterprise, which is seeking for exemption, is not a manufacturer, but only an importer, such an enterprise cannot seek for exemption.

14. In the light of the above discussions, there is absolutely no doubt in the mind of this Court that the exemption applied only to the manufacturer and not to the importer. In fact, even the petitioner had properly understood the scope of the Notification and sought for a no objection certificate vide their representation dated 17.3.2025. The said order dated 25.9.2025 passed by me has not gone into this crucial issue and therefore, it will not apply to the facts of the present case.

15. The further submission made by the learned counsel for the petitioner that the date of Bill of Lading must be reckoned as the date of import, which was prior to 01.4.2025, is of no consequence since an importer, which imports the subject goods, cannot import the same without the goods conforming to IS 5405 : 2019 and without the BIS mark. The petitioner, in fact, had admitted that the application submitted by the overseas supplier under FMCS has been pending. Consequently, the goods that were imported by the petitioner did not fulfil the BIS requirement and just because the petitioner was registered as a small and medium enterprise, they cannot seek for relaxation for the imported consignment.

16. The amended Medical Textiles (Quality Control) Order dated 01.1.2025 was not goods centric and it was only manufacturer centric and therefore, the exemption granted can be availed only by a manufacturer, which is a small and medium enterprise.

17. The order passed by the first respondent can be challenged by way of filing an appeal before the CESTAT under Section 129A(1) of the Customs Act, 1962. When such an alternative remedy is available, this Court generally will not exercise its discretion under Article 226 of The Constitution of India unless the Authority, who passed the order, lacks jurisdiction or the order has been passed in violation of the principles of natural justice or the order suffers from an error apparent on the face of it. None of the above ingredients is satisfied in the present case.

18. In fact, the impugned order was passed by the first respondent only after affording an opportunity to the petitioner. This is yet another reason as to why this Court is not inclined to exercise its discretion under Article 226.

19. In the result, the writ petition is dismissed. It is left open to the petitioner to avail the alternative remedy of appeal before the CESTAT. If any such appeal is filed before the CESTAT, the time taken by the petitioner in prosecuting the present writ petition shall be given due credit and the appeal shall be dealt with on its own merits and in accordance with law. This is subject to a condition that the appeal has to be filed by the petitioner before the CESTAT within a period of one week from the date of receipt of a copy of this order, failing which, the impugned order dated 22.8.2025 passed by the first respondent shall become final. If the appeal is filed in time before the CESTAT, it is left open to the petitioner to raise all the grounds and the same shall be dealt with on merits and in accordance with law. No costs. Consequently, the connected WMPs are also dismissed.

31.10.2025

Index : Yes
Neutral Citation : Yes

To
1.The Commissioner of Customs
(Imports), No.60, Rajaji Salai,
Chennai-1.

2.The Additional Commissioner of Customs, Import Commissionerate, Group 6, Customs House, No.60, Rajaji Salai, Chennai-1.

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N.ANAND VENKATESH,J

RS

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