



Writ Petition No.37067 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2025

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.37067 of 2025

and

W.M.P.Nos.41469 & 41471 of 2025

M/s.Shree Ganesh Enterprises,
represented by its Proprietor
Shri.Saurabh Ojha,
A-401, Hansa, CTS No.118, 118/1 to 118/9,
Behind Rameshwar Mandir,
Jogeshwari East, Nandurbar,
Maharashtra - 400 060.

... Petitioner

Vs.

- 1.The Intelligence Officer (CI),
Directorate of Revenue Intelligence,
7th Floor, Drum Shaped Building,
I.P.Bhawan, I.P.Estate,
New Delhi - 110 002.
- 2.The Principal Commissioner of Customs (Preventive),
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.
- 3.The Additional Commissioner of Customs,
O/o.The Principal Commissioner of Customs,
Preventive Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

... Respondents



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Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for records in F.No.DRI/HQ-CI/B CELL/50D/ENQ-1/2025, dated 05.05.2025 passed by the first respondent herein in petitioner's Bill of Entry No.7813377, dated 16.01.2025 and quash the same as illegal, arbitrary, unfair, unreasonable, violation of principles of natural justice and perverse insofar as ordering Provisional Release as per the Guidelines issued under Board Circular No.35/2017-Customs, dated 16.08.2017 which has been held as void and unenforceable at law by Hon'ble Division Bench of Delhi High Court and direct the second respondent herein to release the goods viz., 240282.00 SQM., of Textile Fabric coated with Plastics imported vide Bill of Entry No.7813377, dated 16.01.2025, totally valued at USD 6007.05 for 240282.00 SQM., on execution of Simple Bond for the Differential Duty on the re-determined value and also on execution of Simple Bond towards the Adjudication levies if any.

For Petitioner : Mr.A.K.Jayaraj

For Respondents : Mrs.Pooja Jain
Standing Counsel



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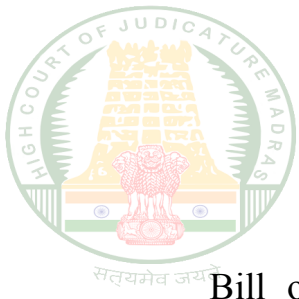
ORDER

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This writ petition has been filed challenging the provisional release order dated 05.05.2025 passed by the first respondent and for a consequential direction to the first respondent to release the goods on execution of Simple Bond for the Differential Duty on the re-determined value and also on execution of Simple Bond towards the adjudication levies, if any.

2. Heard Mr.A.K.Jayaraj, learned counsel for the petitioner and Mrs.Pooja Jain, learned Standing Counsel appearing for the respondents.

3. The petitioner had placed order with a supplier in China for supply of Textile Fabric Coated with Plastics and one of the consignment reached the Chennai Port and the same was also taken to the SEZ Ware House in Nandiampakkam, Chennai. The petitioner had imported 240282 SQM. of Textile Fabric Coated with Plastics from China, valued at USD 6,007.05. The goods were shipped under invoice dated 17.12.2024 and the



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Bill of Entry was filed dated 16.01.2025 and the petitioner claim for clearance of the goods.

4. The petitioner had submitted all the necessary documents and also filed the Bill of Entry and sought for the clearance of the goods by declaring the value of the goods. The petitioner requested further release of the goods.

5. An investigation was done and summon was issued to the petitioner to appear before the Investigating officer at New Delhi and the petitioner attended the enquiry and statement was also recorded from him.

6. Thereafter, the petitioner was repeatedly sending communication through E-mails, seeking for the return of the goods. In the meantime, the petitioner received a letter dated 12.07.2025, extending the time period for issuance of show cause notice in terms of Section 110 of the Customs Act from the Deputy Director. At this juncture, the petitioner



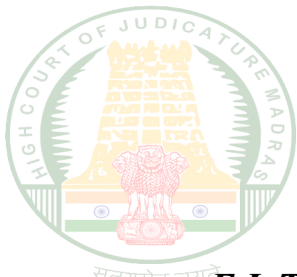
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received the impugned provisional release order dated 05.05.2025 from the first respondent, informing the petitioner provisional release of the goods in terms of Section 110A of the Customs Act read with guidelines issued under Board Circular No.35/2017-Customs, dated 16.08.2017.

7. The petitioner aggrieved by the impugned provisional release order dated 05.05.2025, issued by the first respondent, has approached this Court.

8. The learned counsel for the petitioner submitted that the provisional release order was issued by placing reliance upon the guidelines issued under CBIC Circular No.35/2017-Customs, dated 16.08.2017 and that this circular already became a subject matter of challenge before the Delhi High Court and it was struck down as contrary to Section 110A of the Customs Act and was held to be void and unenforceable in law. To substantiate this submission, the learned counsel relied upon the Division Bench judgment of the Delhi High Court in the case of ***Additional Director General (Adjudication) Vs. Its My Name Pvt., Ltd.***, reported in **2021 (375)**



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E.L.T. 545 (Del.). The learned counsel further brought to the notice of this Court that the Apex Court confirmed the judgment of the Delhi High Court by dismissing the S.L.P by order dated 01.10.2020.

9. The learned counsel, therefore, submitted that there was absolutely no justification on the part of the first respondent to impose onerous conditions as a condition precedent for release of the goods and accordingly, contended that the provisional release order is liable to be interfered by this Court.

10. *Per contra*, the learned Standing Counsel appearing on behalf of the respondents submitted that the Apex Court did not go into the validity or otherwise of the judgment of the Delhi High Court, since the particular case, which went on an appeal before the Hon'ble Supreme Court, the Apex Court merely took into consideration the submission made by the learned Senior Counsel appearing on behalf of the assessee reporting no objection for the enhancement of the quantum of the Bank Guarantee and accordingly, the Apex Court merely modified the order of the High Court with respect to



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the quantum of Bank Guarantee and disposed of the S.L.P. The learned Standing Counsel further submitted that the adjudication is yet to take place and at that point of time, if any additional duty, fine or penalty is imposed against the petitioner, there must be some security available with the Department for recovering the same. Hence, it was contended that there is absolutely no reason for interfering with the provisional release order.

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

12. This Court is not dealing with the merits of the case since what has been put to challenge is the provisional release order and that too questioning some of the onerous conditions. While undertaking this exercise, it will suffice to take note of some of the earlier orders passed by this Court. One such order was passed in the case of ***Green Line Vs. Commissioner of Customs, Chennai -IV***, reported in ***2016 (340) E.L.T 140 (Mad)***. That was also a case, which involved differential duty of non prohibited goods. Similar conditions were imposed and the said writ petition was disposed of



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by this Court in the following terms:

“8. In the light of the above discussions, the Writ Petition is disposed of with the following directions:

(i) The petitioner is directed to remit the entire duty as assessed by them;

(ii) The petitioner is directed to pay 50% of the differential duty which has been arrived at by the Department as Rs. 22.72 lakhs;

(iii) The petitioner is directed to execute a bond for the remaining amount to the satisfaction of the respondents.

(iv) The petitioner shall execute an indemnity bond stating that in the event of Shir.S. Ariya raising any claim over the goods or concerning the use of IEC code issued in favour of M/s. Green Line, the petitioner Mr. Mohamed Kalith alone would be fully responsible for the same and no liability can be fastened on the respondent Department and the indemnity bond should be furnished in the form approved by the respondents.”

13. This order of the learned Single Judge was subsequently confirmed by the Hon'ble Division Bench of this Court in ***W.A.No.1243 of 2016 dated 25.10.2016***. It is also relevant to take note of a Division Bench order of this Court in the case of ***Commissioner of Customs and Others vs. Sri Venkateshwara Paper Boards Rep.by its General Manager Mr. L. Barath*** reported in ***2022 (379) E.L.T 310 (Mad)***, which involved prohibited goods and the writ petition was disposed of in the following terms:



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“32. We have perused the order dated 29.12.2020 permitting provisional release of the cargo, subject to the following conditions:

- (a) execution of a bond for Rs. 34,65,334/-,*
- (b) production of cash security/bank guarantee for Rs. 12,12,867/- towards redemption fine and penalty, and*
- (c) payment of duty of Rs. 9,43,411/-.*

33. We find nothing unreasonable about conditions (a) and (c), however condition (b) is concerned directing the Importer to furnish Bank guarantee/cash security towards redemption fine and penalty would be harsh as the show-cause notice is yet to be adjudicated. Therefore, we modify the condition (b) alone by directing the Importer to execute the bond for Rs. 12,12,867/-.

34. On compliance of the execution of the bond for the amount mentioned in conditions (a) and (b) supra and payment of duty as mentioned in condition (c), the Revenue shall permit provisional release of the cargo within seven (7) days therefrom, which shall be subject to the result of the adjudication of the show-cause notice.”

14. In the case in hand, the goods that are involved are Textile Fabric Coated with Plastics, which according to the Department has been misclassified and undervalued. Therefore, the Department is proceeding further with the adjudication proceedings. Pending the same, the impugned provisional release order has been passed.



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15. In the impugned order, the first respondent has stated as follows:

"2. In this regard, the provisions of provisional release of seized goods pending investigation, under Section 110A of the Customs Act, 1962 read with guidelines issued under Board's Circular No.35/2017-Customs, dated 16.08.2017 are brought to your attention for information."

16. Taking into consideration the facts and circumstances of the case and considering the grounds raised in the writ petition and also taking into consideration of the earlier orders passed by this Court, this Court is inclined to modify the conditions imposed in the provisional release order as follows:

- a) The petitioner is directed to remit the entire duty as declared by them;
- b) The petitioner is directed to pay 50% of the differential duty for the total value arrived at by the Department;
- c) The petitioner shall execute a bond for a sum of Rs.54,65,196/-(Rupees Fifty Four Lakhs Sixty Five Thousand One Hundred and Ninety Six only) and
- d) The petitioner shall also execute a bond for value of



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goods in respect of adjudication levies, if any. On compliance, the goods shall be released by the respondent within a period of seven (7) days from the date of compliance of the conditions.

17. The above conditions will suffice to take care of the interest of the Department and at the same time, the petitioner will also be able to get the goods released in its favour.

18. Subject to the compliance of the above conditions, goods shall be released by the respondents. The Department is directed to proceed further with the adjudication and the petitioner shall co-operate during the adjudication proceedings to ensure that it is completed as expeditiously as possible.



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N.ANAND VENKATESH, J.

gm

In the result, the writ petition is disposed of in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

25.09.2025

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No
gm

To

- 1.The Intelligence Officer (CI),
Directorate of Revenue Intelligence,
7th Floor, Drum Shaped Building,
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