IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2025

CORAM

THE HONOURABLE Mr.JUSTICE **N. ANAND VENKATESH**

W.P.No.39922 of 2025

M/s.Glamex
4, 408-409, Braahmasiddhi Building
Near Century Bazar Prabha Devi
Mumbai - 400 025.
Represented by its Proprietor
Mr.Bhavesh Ramesh Patel .. Petitioner

Vs.

1.The Commissioner of Customs
Chennai II Import Commissionerate
Custom House, No.60, Rajaji Salai
Chennai - 600 001

2.The Additional Commissioner of Customs (Gr.5)
Chennai II Import Commissionerate
Custom House, No.60, Rajaji Salai
Chennai - 600 001

3.The Deputy Commissioner of Customs (Gr.5)
Custom House, No.60, Rajaji Salai
Chennai - 600 001 .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents 1 to 3 herein to forthwith release the various models of Secondhand Highly Specialized Equipment namely used Digital Multifunction Print, Copying & Scanning Machines, numbering 101 units imported by the petitioner under Bill of Entry No.4857393 dated 01.10.2025, provisionally under Section 110A of the Customs Act.

For Petitioner : Mr.N.Viswanathan

For Respondents : Mr.R.P.Pragadish,
Senior Standing Counsel
Mr.J.Harikrishna
Junior Standing Counsel

ORDER

This writ petition has been filed for the issue of writ of mandamus directing respondents to release various models of secondhand highly specialized equipment, *viz*., used Digital Multifunction Print, Copying and Scanning machines, provisionally under Section 110-A of the Customs Act, 1962.

2. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

3. The case of the petitioner is that they have imported a consignment of

secondhand highly specialised equipments. Those machines were also subjected to examination by the Customs by engaging DGFT approved Chartered Engineer. They have also given the report certificate to the Customs Officer In-charge.

4. The grievance expressed by the petitioner is that the respondents proceeded to forfeit those goods in spite of the report of the approved Chartered Engineer.

5. The issue involved in the present writ petition is squarely covered by the earlier order passed by this Court in a batch of writ Petitions in W.P.No.29418 of 2024 *etc.* batch dated 10.07.2025. The relevant portions are extracted hereunder:-

> *"29. A plea has also been taken by the Ministry of Environment, Forest and Climate Change that MFDs will fall under "other wastes" as defined under Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 (in short "HOW Rules"), that was framed by the Ministry of Environment, Forest and Climate Change in 2016, and therefore, MFDs are restricted items, which require prior permission from the Ministry of Environment, Forest and Climate Change. The said Rules will not affect the provisional release of the MFDs which have been sought in these writ petitions for the following reasons:-*
>
> *(a) Rule 3(23) of the HOW Rules has defined "other wastes", as per which, the wastes specified in Part B and D of Schedule III for import or export would include all such wastes generated indigenously within the country.*
>
> *(b) Rule 13(2) of the HOW Rules also states that for the import of other wastes listed in Part D of Schedule III, the importer shall not require the permission of the Ministry of Environment,*

Forest and Climate Change. The only requirement of the importer under Rule 13(2) of the HOW Rules is that the importer should file certain documents that are enumerated in Schedule VIII to the Customs Authorities at the time of import.

(c) The petitioners have categorically contended that they have fulfilled this requirement, as, according to them, all the documents enumerated under serial No.4(j) of Schedule VIII, wherever applicable, have been filed by them, and in fact, if required, the production of applicable documents by the petitioners and the verification of the same by the Customs Department can be made as one of the conditions for the grant of provisional release. Therefore, on a prima-facie consideration of the HOW Rules, it is clear that there is no prohibition for the import of MFDs.

30. It is also to be noted that the provisional release order can be reversed in the final adjudication process. While seized goods may be released provisionally pending investigation or adjudication, a final decision in the case including any penalties or confiscation can supercede the provisional release order. Under Section 110A of the Customs Act, 1962, goods can be released on a provisional basis during the investigation or adjudication of the case. This allows the owner to have possession of the goods while the matter is being resolved. The adjudication process determines the final outcome of the case including whether the goods are liable to be confiscated or whether any penalties or duties are owed. If the final adjudication results in a decision that the goods are liable to be confiscated or penalties/duties are liable to be paid, provisional release order can be reversed.

31. In customs matters, "benefit of doubt" principle generally means that if there is a reasonable doubt regarding the truth and accuracy of importer's declaration, the Customs Authorities must provide evidence to support their doubts before rejecting the importer's declaration and if the authorities cannot provide sufficient evidence to disprove the declaration of the importer, generally the importer will be given the benefit of doubt. In the case on hand, the petitioners claim that the imported goods, namely, MFDs are HSEs and therefore, they claim that they are exempted from the application of CRO, 2021, and the subsequent amended notifications. Their claim is also, on a prima-facie consideration, supported by the earlier decisions rendered by this Court and also by the decision of *the Telangana High Court, which has been upheld by the Hon'ble Supreme Court, which has permitted provisional release of MFDs for other importers. A finding has also been rendered by the Telangana High Court that MFDs fall under the category of HSEs and they are freely importable. Though the respondents may contend that MFDs are not freely importable and are restricted items or have been prohibited items, the same cannot be conclusively established with the available materials at the stage of granting provisional release. Further, the goods in question are not contraband items or items which affects security of India, like, explosives, etc. Therefore, by applying the benefit of doubt principle as well, this Court will have to give the benefit of doubt to the importer at this stage, as the respondents (customs department) do have the power to reverse the provisional release order at a later date through its final adjudication order. Therefore, in the interest of justice, provisional release will have to be granted as prayed for in these writ petitions.*

32. For the foregoing reasons, these writ petitions are disposed of by this Court by issuing the following directions:-

(a) The Customs Department, Chennai, is directed to pass orders for provisional release of the goods, which are the subject matter of the dispute in these writ petitions, by imposing conditions, as they deem fit, as per the provisions of the Customs Act, 1962, within a period of four weeks from the date of receipt of a copy of this order.

(b) On fulfilment of the said conditions by the petitioners, the Customs Department, Chennai, is directed to release the goods provisionally to the respective writ petitioners within a period of two weeks thereafter.

(c) Provisional release of the goods in question is subject to final adjudication being made by the Customs Department, and the provisional release order shall not prevent the Customs Department to reverse its decision in the final adjudication by passing appropriate orders as per the provisions of the Customs Act.

(d) Connected writ miscellaneous petitions are closed. No Costs."

6. The case in hand is also squarely covered by the above order.

7. In view of the above, this writ petition is disposed of by issuing the following directions:-

(a) The Customs Department, Chennai, is directed to pass orders for provisional release of the goods, which is the subject matter of the dispute in this writ petition, by imposing conditions, as they deem fit, as per the provisions of the Customs Act, 1962, within a period of four (4) weeks from the date of receipt of a copy of this order;

(b) On fulfillment of the said conditions by the petitioner, the Customs Department, Chennai, is directed to release the goods provisionally to the writ petitioner within a period of two (2) weeks thereafter; and

(c) Provisional release of the goods in question is subject to final adjudication being made by the Customs Department and the provisional release order shall not prevent the Customs Department to reverse its decision in the final adjudication by passing appropriate orders as per the provisions of the Customs Act, 1962.

There shall be no order as to costs.

25.10.2025

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Index : Yes/No
Neutral Citation : Yes/No
Speaking / Non-speaking order

To

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N. ANAND VENKATESH, J.

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