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WP No. 41315 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31-10-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

**WP No. 41315 of 2025
and WMP Nos. 46256 & 46257 of 2025**

M/s.Shiv Sai Associates
Rep. by its Proprietor G.Balaji,
No.51/52, Real Towers, 1st Floor,
Royapettah High Road, Mylapore,
Chennai-600 004.

Petitioner(s)

Vs

1.The Principal Commissioner of Customs (Preventive)
Custom House, No.60, Rajaji Slaai,
Chennai-600 001.

2.The Additional Commissioner of Customs (NDR-FTWZ),
O/o The Principal Commissioner of Customs,
Preventive Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai 600 001

Respondent(s)



PRAYER Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records in F.No.GEN/ADJ/Misc/338/2025, dated 16.07.2025, passed by the 2nd Respondent herein in petitioner's Bill of Entry No.8311255, dated 12.02.2025 and quash the same as illegal, arbitrary, unfair, un-reasonable, violation of principles of natural justice and perverse in so far as Condition No.1 and 3 of the impugned order dated 16.07.2025 and direct the 2nd respondent herein to release the goods viz., 56500.92 sqm. of PVC Coated Fabric imported vide Bill of entry No.8311255, dated 12.02.2025, totally valued at USD 3,390.06 for 56500.92 sqm., without insisting for payment of Duty on the re-Determined Value and without insisting for furnishing Bank Guarantee for Rs.9,00,000/-

For Petitioner(s): Mr.A.K. Jayaraj

For Respondent(s): Mr.R.P.Pragadish
Senior Standing Counsel for
J.Harikrishna
Junior Panel Counsel

ORDER

This writ petition has been filed, challenging the provisional release order dated 16.07.2025 passed by the 2nd respondent and for a consequential direction to the 2nd respondent to release the goods without insisting for



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payment of duty on the re-determined value and without insisting furnishing of

Bank Guarantee for a sum of Rs.9,00,000/-.

2. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondents.

3. The petitioner had placed order with a supplier in China for supply of PVC coated fabric and one of the consignments reached the Chennai Port and the same was also taken to the SEZ Ware House in Nandiambakkam, Chennai. The petitioner had imported 56500.92 SQM of PVC coated fabric from China, valued at USD 3390.06. The goods were shipped under invoice dated 04.01.2025 and the Bill of Entry was filed dated 12.02.2025 and the petitioner claim for clearance of the goods for home consumption.

4. The petitioner had submitted all the necessary documents and also filed the Bill of Entry for home consumption and sought for the clearance of the



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goods by declaring the value of the goods. The petitioner requested further release of the goods.

5. An investigation was done and summons 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. At this juncture, the petitioner received the impugned provisional release order dated 16.07.2025 from the 2nd respondent, informing that the Additional Commissioner of Customs has approved the provisional release of the goods covered under the Bill of Entry dated 12.02.2025 in terms of Section 110 of the Customs Act, after paying the re-determined duty as mentioned in the seizure memo and the petitioner executing a bond for a sum of Rs.39,00,000/~ and the petitioner also furnishing Bank Guarantee for a sum of Rs.9,00,000/-. It was also informed to the petitioner that they must also give an undertaking to fully comply with the adjudication outcome and pay any



Additional Duty, Fine or Penalty that may be imposed in the said proceedings.

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7. The petitioner aggrieved by the impugned provisional release order dated 16.07.2025, issued by the 2nd 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) 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.



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9. The learned counsel therefore submitted that there was absolutely no justification on the part of the 2nd respondent to impose onerous conditions as a condition precedent for the 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 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



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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 and therefore, the petitioner has to necessarily execute the Bank Guarantee as was directed in the provisional release order dated 16.07.2025. 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 by this Court in the following terms:

□ 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. □



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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:

□ ~~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 PVC coated fabric, 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.

15. The relevant conditions that have been imposed in the provisional release order are as follows:



Specific Conditions:

1. The importer shall file the DTA Bill of Entry for provisional release for the re~determined value and shall pay re~determined duty as mentioned in seizure memo and/or NOC issued by the DRI, HQ, New Delhi. The Bill of Entry shall be assessed provisionally in view of pending investigation.

2. The importer shall execute a Bond for Rs.39,00,000/-.

3. The importer shall furnish a Bank Guarantee(BG) for Rs.9,00,000/-.

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.39,00,000/-; and

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d) The petitioner shall also execute a bond for a sum of Rs.9,00,000/- instead of Bank Guarantee. On compliance, the goods shall be released by the respondents within a period of seven days from the date of compliance of the conditions.

17. This Court is inclined to interfere with the provisional release order only insofar as the direction given to the petitioner to furnish a Bank Guarantee for a sum of Rs.9,00,000/-. 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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In the result, the writ petition is disposed of in the above terms.

Connected W.M.P. is closed.

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Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No

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To

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