IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2025

CORAM

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

W.P.No.42619 of 2025
AND
W.M.P.No.47668 of 2025

M/s.Prakash International
Rep. by its Proprietor Prakash Doulat Kumar
701, Vaibhav, 13 Union Park
Khar (West), Mumbai 400 052 ... 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 (Chennai-III) (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

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records in F.No.DRI/HQ-CI/B CELL/50D/ENQ-1/2025/1272 dated 05.05.2025 passed by the 1st respondent herein in petitioner's Bill of Entry No.7808770 dated 16.01.2025 and quash the same as illegal, arbitrary, unfair, un-reasonable, violation of principles of natural justice and perverse insofar as ordering provisional release in adhering to the provisions provided under Section 110A of the Customs Act read with 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 2nd respondent herein to release the goods *viz*., 267123 SQM of polyester fusible interlining fabrics imported *vide* Bill of Entry No.7808770 dated 16.01.2025 totally valued at USD 13,356.15 on execution of simple bond towards the adjudication levies if any.

For Petitioner	:	Mr.A.K.Jayaraj
For R1	:	Mr.M.Santhanaraman Senior Standing Counsel
For RR2 & 3	:	Mr.T.Nalinidhar Central Government Standing Counsel

O R D E R

This writ petition has been filed challenging the provisional release order dated 05.05.2025 passed by the 1st respondent and for a consequential direction to the 2nd 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; Mr.M.Santhanaraman, learned Senior Standing Counsel for the 1st respondent and Mr.T.Nalinidhar, learned Central Government Standing Counsel for the respondents 2 and 3.

3. The petitioner had placed order with a supplier in China for supply of polyester fusible interlining fabrics 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 267123 SQM of polyester fusible interlining fabrics from China, valued at USD 13,356.15. The goods were shipped under invoice dated 26.12.2024 and the 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. The petitioner would submit that on an earlier occasion they had imported similar goods and got necessary clearance from the office of the second respondent and on that pretext, he requested for release of the goods. Thereafter, the authorities had de-stuffed the goods and conducted examination of the goods. Subsequently, the samples were sent for testing. The authorities had informed the petitioner that the release of the goods would be subject to the test result of the sample.

6. At this juncture, the petitioner received the Seizure Memo dated 26.03.2025, from the 2nd respondent stating that as per the CRCL Test Report, the goods have to be re-classified and therefore, the seized goods were liable for confiscation and were placed under seizure in terms of Section 110(1) of the Customs Act. The seizure memo has also drawn reference to the provisions of

provisional release 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 communication dated 05.05.2025, issued by the 1st respondent, has approached this Court.

8. The petitioner would further submit that the subject goods were freely importable goods and cheaper in price. He also added that identical goods were already assessed and released by the Customs Officers, by accepting the value declared in the Bill of Entry.

9. 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.

10. 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.

11. *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 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 05.05.2025. Hence, it was contended that there is absolutely no reason for interfering with the provisional release order.

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

13. 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:

> *"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."*

14. 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."*

15. In the case in hand, the goods that are involved are polyester fusible interlining fabrics, 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 order has been passed.

16. In the impugned order, the 1st respondent has stated as follows:

राजस्व आसूचना निदेशालय
DIRECTORATE OF REVENUE INTELLIGENCE
7वां फ्लोर, ड्रम शेप बिल्डिंग, आई.पी. भवन, आई.पी. एस्टेट, नई दिल्ली
7th FLOOR, DRUM SHAPED BUILDING, I.P. BHAVAN, I.P. ESTATE, NEW DELHI
TEL.: 23378629, 23379871; E-MAIL: hqci-dor@nic.in

F.No. DRI/HQ-CI/3 CELL/50D/ENQ-1/2025/11272 DATE: 05.05.2025

To
M/s. Prakash International (IEC. 503081368),
701, Vaibhav Road No.4, 13 Union Park Khar (W),
Mumbai Maharashtra 400052.

Subject: Communication of provisions of provisional release of the seized goods provided under section 110A of the Customs Act, 1962-reg.

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Please refer to the subject mentioned above and the seizure memo, dated 26.03.2025 (copy enclosed) issued to you by this office.

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.

3. Further, it may kindly be noted that this letter is issued only for information regarding provisions of provisional release of seized goods under Customs Act, 1962, and should not be treated as a No Objection Certificate (NoC) for provisional release.

Encl: as above.

(Sahal Gahlot)
Intelligence Officer (CI)

Copy to:-

1. The Pr. Commissioner of Customs (Chennai-III) (Preventive), Custom House, No. 60, Rajaji Salai, Chennai-600 001;
2. Specified Officer, FTWZ NDR Infrastructure Private Limited, Nandiambakkam, Ponneri Taluk, Chennai- 600120.
3. M/s. Malj Lines Private Limited, situated inside FTWZ M/s. NDR Infrastructure Private Limited, Nandiambakkam, Ponneri Taluk, Chennai- 600120.

17. 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.73,46,074.49; and

d) The petitioner shall also execute a bond for value of 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.

18. 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.

19. 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.

In the result, the writ petition is disposed of in the above terms. No costs. Consequently, connected W.M.P. is closed.

12.11.2025
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Index : Yes / No
Neutral Citation : Yes / No

N.ANAND VENKATESH, J.

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To

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Directorate of Revenue Intelligence
7th Floor, Drum Shaped Building
I.P.Bhawan, I.P. Estate
New Delhi 110 002

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