IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2026

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE K.SURENDER

W.A.No. 902 of 2026 AND
C.M.P.NO.9562 OF 2026

1. The Commissioner
   Custom House,
   60, Rajaji Salai,
   Chennai 600 001.

2. The Addtional Commissoner of Customs
   Group 1, Customs House,
   60, Rajaji Salai,
   Chennai-01.

3. The Deputy Commissioner of Customs
   Group 1, Custom House, 60,
   Rajaji Salai,
   Chennai 600 001

..Appellant(s)

-vs-

Balaji Trading Company
No. 1046, Binaki layout
Near Regal Celebration Hall
Binaki Mangalwari Nagapur 440 026,

..Respondent(s)

Prayer: To set aside the order dated 26.12.2025, passed in W.M.P. No. 56394 of 2025 and modified by later order dated 07.01.2026.

For Appellants:	Ms.Divya Shree For Rajnish Pathiyil, SPC
For Respondent:	Mr.B.Satish Sundar

*****

JUDGMENT

(Judgment of the Court was delivered by S.M.Subramaniam J.)

The present Intra Court Appeal under Clause 15 of the Letters Patent has been instituted by the Commissioner of Customs (Imports) along with competent authorities of Customs Department, challenging the interim order dated 26.12.2025 made in W.M.P.No.56394 of 2025 in W.P.No.50387 of 2025.

2. The respondent, namely, M/s.Balaji Trading Company is a proprietary concern engaged in the import and local sale of food products, including areca nuts and the respondent imported a consignment described as split betel nuts (areca nuts) from Bangladesh and filed Bill of Entry No.6230018 dated 11.12.2025, claiming classification under CTH08028090 and exemption from Basic Customs Duty under Notification No.99/2011-Cus dated 09.11.2011, on the strength of a SAFTA Certificate of Origin issued by the competent authority in Bangladesh.

3. At the time of assessment, the Customs authorities, in exercise of their statutory powers under Section 17 of the Customs Act, 1962 (in short the 'Customs Act, 1962'), provisionally assessed the Bill of

Entry, citing the need for verification of the Certificate of Origin under the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (in short 'CAROTAR,2020). Under Rule 6(1)(b) of CAROTAR, 2020, the respondent was required to furnish a bond and Bank Guarantee to safeguard the interest of the revenue, pending verification. The guidelines for provisional assessment and the quantum of suitable security to be taken is stipulated in CBIC Circular 38/2016-Customs dated 22.08.2016. As per the said circular, the respondent has to furnish a Bank Guarantee equal to 100% of the value of goods.

4. The Deputy Commissioner of Customs, vide communication dated 23.12.2025, reiterated the legal requirement under CAROTAR, 2020 in view of Circular dated 22.08.2016 and ordered provisional assessment accordingly. The respondent has not availed statutory remedies available under the Customs Act, 1962 and filed the writ petition.

5. Writ Court passed an interim order, directing the appellant / authorities to provisionally release the goods in question forthwith on furnishing Bank Guarantee for 10% and execute indemnity bond for 90% of the differential duty by the assessees.

6. Learned counsel for the appellant would mainly contend that as per Ministry of Finance Circular No.38/2016-Customs dated 22.08.2016, which was issued in exercise of powers conferred under the Customs Act, 1962, cases related to verification of origin under FTAs based on the reasonable belief that the matter involves misdeclaration of origin / value addition, 100% of Bank Guarantee or Cash Deposit to be obtained as "security" of the differential duty. Since Writ Court has granted an interim order, permitting the respondent herein to furnish Bank Guarantee for 10% and execute indemnity bond for 90% of the differential duty, the Department has preferred the present Writ Appeal, stating that in the event of non-furnishing of 100% Bank Guarantee as stipulated in the Circular, there is a possibility of loss of revenue to the State and the Circular being protective measure undertaken by the Ministry of Customs and Excise in exercise of the powers under the Act, the said interim order is to be set aside and direction is to be issued to the respondent to furnish 100% Bank Guarantee as contemplated under the Circular dated 22.08.2016.

7. Learned counsel for the respondent would oppose, by stating that the Circular is not binding on the respondent as well as High Court. In view of Section 28DA of the Customs Act, 1962, it is not mandatory to furnish 100% Bank Guarantee as per the said Circular and

the High Court passed several final orders, permitting importers to furnish Bank Guarantee for less than 100% and therefore, the said interim order is liable to be upheld.

8. This Court has considered rival submissions raised between the parties.

9. Section 28 DA of the Customs Act, 1962 contemplates procedure for claiming preferential tariff rates under Free Trade Agreements (FTAs). Section 28DA(1)(3) of the Customs Act, 1962 stipulates that where the proper officer has reasons to believe that country of origin criteria has not been met, he may require the importer to furnish further information, consistent with the trade agreement, in such manner as may be provided by rules.

10. In the present case, at the time of assessment by Customs Authorities under Section 17 of the Customs Act, 1962, the veracity of certificate of origin produced by the respondent has been sought for. Since it could not be verified, the authorities attached the goods. Under these circumstances, the revenue is to be protected, if any order of provisional release is ordered either by the authority under the Customs Act, 1962 or by Courts. The Commissioner of Customs

(Imports), vide proceedings dated 23.12.2025 addressed a letter to the respondent, stating that the subject Bill of Entry was assessed provisionally against a bond with 100% Bank Guarantee pending verification of the country of origin as per Rule 6(1)(b) of CAROTAR, 2020.

11. The High Court, while exercising the powers of judicial review, is expected to exercise restraint in the matter of protection of revenue. Any liberal approach in protecting the State revenue may result in causing financial loss to the public funds. Therefore, the Act, Rules or Circular, as applicable, must be scrupulously followed.

12. In the present case, the Ministry of Finance has issued Circular for providing 100% Bank Guarantee. In such circumstances, if discretionary orders are passed, then there may not be any mechanism to ensure to recover the Revenue, if the Authorities found that the Certificate of Origin disclosed by the importer is incorrect.

13. Considering the fact that Customs Authorities already took a long time for verification of country of origin where from the goods are imported and also considering the plight of the respondent / importer, this Court is inclined to pass the following orders:

i) Appellants / Customs Authorities are directed to verify the country of origin from the place where the goods are imported within a period of three weeks from the date of receipt of a copy of this order;

ii) If the country of origin as disclosed by the respondent is found to be correct, the goods are to be released forthwith in accordance with the provisions of Act, Rules and Circular;

ii) However, if the country of origin as stated by the respondent is incorrect or false, then the respondent is directed to furnish 100% Bank Guarantee as stipulated in CBIC Circular 38/2016-Customs dated 22.08.2016 for provisional release of goods.

With the above observations and directions, the present Writ Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

(S.M.S.,J.) (K.S.,J.)
27-04-2026

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

S.M.SUBRAMANIAM,J.
AND
K.SURENDER,J.
AR

W.A.No.902 of 2026

27-04-2026