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W.P.No.24911 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2023

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.24911 of 2022
and W.M.P.Nos. 23849 & 23850 of 2022

M/s. BE Office Automation Product (P) Ltd.,
Plot No.10 A, Phase III, Gangyol,
Jammu – 180 010
rep. By its Director
Mr.Ram Bhagat Yadav

.. Petitioner

VS

1.The Commissioner of Customs
Chennai II Customs Commissionerate,
Customs House, 60 Rajaji salai,
Chennai 600 001.

2.The Additional Commissioner of Customs (Group 5)
Chennai II Customs Commissionerate,
Customs House, 60 Rajaji Salai,
Chennai 600 001.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records pertaining to order dated 17.08.2022 passed by 2nd respondent herein to quash the same and passed contrary to law and in violation of Art.14 and 19(1) (g) of the Constitution and consequently direct the 2nd respondent herein to forthwith provisionally release the goods viz., used Multifunction Digital Print



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and Copying Machines (MFDs) imported by the petitioner herein under BE Nos. 8286002/02.10.18; 8467841/15.10.18, 7884546/03.09.18 and 7917595/05.09.18 on the same terms and conditions as ordered by the Hon'ble Supreme Court in its orders dated 11.08.2021 in S.L.P.No.7565 of 2021.

For Petitioner : Mr.N.Viswanathan
For Respondents : Mrs.R.Hemalatha
Senior Standing Counsel

ORDER

The petitioner seeks a certiorified mandamus calling for and quashing order dated 17.08.2022 passed by the Additional Commissioner of Customs / R2. It consequentially seeks a direction to R2 to forthwith provisionally release used Multifunction Digital Print and Copying Machines in BE Nos. 8286002/02.10.18; 8467841/15.10.18, 7884546/03.09.18 and 7917595/05.09.18 (MFDs / goods in question).

2. The petitioner relies on the judgment of the Hon'ble Supreme Court in the case of *Delhi Photocopiers v the Commissioner of Customs* dated 11.08.2021 in S.L.P.(c) No. 7565 of 2021.



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3. Though a counter has been filed by the respondents objecting to the averments in the writ affidavit, learned Standing Counsel would point out that there has been a shift in the legal position and pre and post 17.09.2021. Prior to 17.09.2021, import of goods in question was 'restricted' whereas post 17.09.2021, such imposition stands prohibited. The judgment of the Hon'ble Supreme Court in S.L.P.(C) No. 7565 of 2020 dealt with a challenge by the respondents to orders of this Court whereunder directions had been given for provisionally release goods similar to the goods in question, on terms, and complete the process of adjudication within a fixed time frame. In that context, the Hon'ble Court directs provisional release referring to several other orders passed by the Hon'ble Court along similar lines. The order extracted below:-

"We have heard the learned senior counsel appearing for the petitioner(s) and Mr. N. Venkataraman, learned Additional Solicitor General appearing for the respondent(s) at length.

On 05.07.2021, this Court had issued notice in these matters. Despite the fact that the matter was pending before this Court, the Department went ahead and confiscated the goods which are the subject matter of these petitions on 17.07.2021. Mr. N. Venkataraman, learned ASG, realizing the difficulty in his way, has asked the Department to stay its hands so far as the confiscation is concerned. We see no reason to differ from a number of orders that have been passed by this Court in the past for provisional release of goods. However, it has been pointed out to us that at least on and



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from 01.04.2020, the goods, according to the Department, are clearly prohibited goods and on and from this date, unless an order is made under Section 125, the goods must stand confiscated.

We stay the confiscation of these goods. The Notification dated 01.04.2020 is the subject matter of controversy before this Court, particularly in view of a subsequent Notification dated 18.03.2021 that has been pointed out by Mr. Arvind Datar, learned senior counsel. We, therefore, allow the goods involved in these petitions, to be provisionally released on the same terms that have been indicated in all the other cases. The order dated 18.09.2020 may, in particular, be looked at for this purpose.

In view of above, the Special Leave Petitions are disposed of.

Pending interlocutory application(s), if any, is/are disposed of."

4. In light of the aforesaid judgment, learned Standing Counsel does not very seriously object to this Court directing provisional release of the goods in question. Needless to say, a final view will be taken based on the adjudication proceedings.

5. Learned counsel for the petitioner confirms categorically that enhanced duty will be remitted. He makes a prayer for waiver of demurrage, which may be addressed to the appropriate respondent for consideration in accordance with law and applicable regulations.



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6. The impugned order is set aside and the goods shall be released within a period of two weeks from today on payment of enhanced duty.

7. Writ petition stands disposed with above directions. No costs. Connected miscellaneous petitions are closed.

06.06.2023

Index:Yes/No
Neutral Citation:Yes
ssm

To

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