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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 07th August, 2025

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W.P.(C) 10489/2025 & CM APPL. 48296/2025**M AND V MARKETING AND SALES PRIVATE
LIMITED**

.....Petitioner

Through: Mr. Amar Dave, Sr. Adv. with Mr.
Kumar Visalaksh, Mr. Darshan Bora,
Mr. Udit Jain & Mr. Satvik Garg, Advs.
(M-9811419024)

versus

**INTELLIGENCE OFFICER DRI HQRS NEW DELHI
& ORS.**

.....Respondents

Through: Mr. Anurag Ojha, SSC with Mr. Dipak
Raj, Mr. Shashank Kumar & Mr. Deep
Raj, Advs. for R-1 & 2.
Mr. Aditya Singla, SSC, CBIC with Mr.
Ritwik Saha & Mr. Akhil Sharma,
Advs. for R-3 to 6.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE SHAIL JAIN****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present writ petition has been filed by the Petitioner under Article 226 of the Constitution of India, *inter alia*, seeking immediate provisional release of goods seized *vide* Seizure Memo dated 1st July, 2025 and Seizure Memo dated 7th July, 2025.
3. The case of the Petitioner is that it has been continuously engaged in import and distribution of various globally renowned food products including flavoured syrups, etc. of a French brand called 'Monin'.



4. The Petitioner further submits that they had never faced problems in imports, however, some time in June, 2025 the Directorate of Revenue Intelligence, Delhi (*hereinafter*, 'DRI') started an investigation and conducted certain searches and issued a seizure memo in respect of certain shipments. The said shipments are now being detained and are not being released.

5. On 22nd July, 2025, when this matter was heard, it was submitted by Mr. Amar Dave, Id. Senior Counsel for the Petitioner that considering that the detained shipments contain perishable food products, the Petitioner had already made a representation for provisional release of these goods. Further, a sum of Rs. 3.75 crores has already been paid by the Petitioner as a voluntary payment. However, despite the same, the provisional release application had not been considered and disposed of.

6. Mr. Amar Dave, Id. Senior Counsel on the said date further submitted that the Respondent Nos. 1 and 2 have given a report to the Respondent No. 3 – Customs Authorities, Mumbai and the said authority now has to take a decision on the provisional release application. In addition, it was further submitted that there are continuous shipments which arrive in India and, therefore, the Customs Department ought to take a stand on the provisional assessment and duty payable as well.

7. Thereafter, *vide* order dated 22nd July, 2025, considering the submissions made on behalf of the Petitioner and the nature of goods being perishable, the Court had directed as under:

*“11. In view of the fact that these goods were imported in June, 2025 and these are perishable food products, **let the Respondent No. 3 – Customs Authority, Mumbai take a decision on the Petitioner’s provisional release application on or before 01st***



August, 2025 and place the decision on record on such terms and conditions as may be imposed in accordance with law.

12. Mr. Dave, Id. Senior Counsel also emphasizes that some part of the goods which have been seized in the warehouse, also includes certain domestic products. If so, the said domestic products would be segregated and be released as no customs duty would be payable on the same.”

8. As per the above order, the Customs Department was directed to take decision on the Petitioner’s provisional release application on or before 1st August, 2025 and place the said decision on record. The said order for provisional release was passed on 24th July, 2025 and the following conditions were imposed:

“I, under Section 110A of Customs Act, 1962, give the importer an option to get the goods (seized under the aforesaid Seizure memorandum dated 01.07.2025) released provisionally, on fulfillment of conditions mentioned as under: -

i. Execution of Bond for an amount equal to the assessable value of the seized goods i.e. Rs. 43,21,86,391 (Rs. Forty Three Crores Twenty One Lakhs Eighty Six Thousand Three Hundred and Ninety one Only) for the goods as mentioned above in Table-I.

ii. Furnishing of Security deposit/Bank Guarantee of Rs.21,00,00,000/- (Rupees Twenty One Crores only) to cover the estimated differential duty along with requisite redemption fine under Section 125(1) and penalty under Section 112(a)(ii)/114A of the Customs Act, 1962 for the goods seized under the aforesaid Seizure memorandum dated 01.07.2025 as per para 2.2 of CBIC Circular No. 35/2017-Customs dated. 16.08.2017.”

9. As can be seen from the above order, the bond which is being sought to



be executed by the Petitioner is to the tune of Rs.43,21,86,391/- and a bank guarantee/security deposit of a sum of Rs.21 crores.

10. This provisional release order was, thereafter, challenged by the Petitioner by way of an application being **CM APPL. 45575/2025**. The said application was filed by the Petitioner seeking to amend the present writ petition and challenge the said provisional release order dated 24th July, 2025. The same was allowed and disposed of *vide* order dated 29th July, 2025. The submission on behalf of the Petitioner on the said date was that, considering the total value of goods being Rs. 43 crores, the condition imposing a requirement to furnish a bank guarantee of Rs. 21 crores is an onerous condition. In addition, one of the grievances of the Petitioner was that the cash deposit of Rs.3.75 crores which was made by the Petitioner under protest was also not considered. Under these circumstances, the Court *vide* order dated 29th July, 2025 had directed the Customs Department to seek instructions in the matter.

11. Today, Mr. Singla, Id. Senior Standing Counsel and Mr. Ojha, Id. Senior Standing Counsel have made their submissions. It is the submission of Mr. Singla, Id. Senior Standing Counsel that in terms of the **Circular No. 35/2017-Customs** dated 16th August, 2017, the provisional release order dated 24th July, 2025 has been passed.

12. Mr. Ojha, Id. Senior Standing Counsel further submits that there is a substantial under-declaration as there is an arrangement between the Petitioner and the manufacturer subsidiary in India being M/s Monin India Private Limited wherein certain amounts are being paid for marketing expenses and the said amounts would be liable to be loaded to determine the true value of the goods and to determine the customs duty payable. Reliance is placed upon the Distributorship Agreement dated 1st January, 2021.



13. Mr. Amar Dave, Id. Senior Counsel on the other hand has relied upon the decision of this Court in ***Rocktek Infra Services Pvt. Ltd. v. Principal Commissioner of Customs (Import), (2025) 28 Centax 392 (Del.)*** as also the decision of the Bombay High Court in ***B.M.S. Enterprises v. Union of India [2025 (392) E.L.T. 433 (Bom.)]*** to argue that the conditions in the provisional release order deserve to be relaxed inasmuch as the entire business of the Petitioner in India is likely to be jeopardized if such onerous conditions are imposed.

14. Heard the Id. Counsel for the parties. At this stage, the Court is only considering whether the provisional release of the goods ought to be permitted and the conditions in respect thereof deserve to be relaxed or not.

15. Insofar as the submissions made by the Id. Counsels for the Customs Department are concerned, the same would have to be considered after the pleadings are completed in the matter. The Court has seen the fact that the ***Circular No. 35/2017-Customs*** which has been relied upon by Mr. Singla, Id. Senior Standing Counsel requires deposits and execution of bond in the following terms:

“Subject : Guidelines for provisional release of seized imported goods pending adjudication under Section 110A of the Customs Act, 1962-reg.

xxx xxx xxx

2.1 Seized imported goods shall be released provisionally by the competent authority upon request of the owner of the seized goods, subject to executing a Bond for the full value/estimated value of the seized goods.

2.2 Further, in addition to the Bond mentioned at Para 2.1. above, the competent authority shall take



a Bank Guarantee or Security Deposit to cover the following:

i. the entire amount of duty/differential duty leviable on the seized goods being provisionally released;

ii. amount of fine that may be levied in lieu of confiscation under Section 125 of the Customs Act, 1962 at the time of adjudication of the case. While securing the same, the competent authority shall take into account the nature of the seized goods, the duty and charges payable on the said goods, their market price and the estimated margin of profit;

iii. amount of penalties that may be levied under the Customs Act, 1962, as applicable, at the time of adjudication of the case.

2.3. Depending on the specific nature of a case, the competent authority may, for reasons to be recorded in writing, increase or decrease the amount of security deposit as indicated above.”

16. A perusal of the above Circular would show that in order to maintain consistency, the Customs Department is required to seek a bond for the full estimated value of the goods. In addition, bank guarantee/security deposit is to be sought for three elements, namely, the entire amount of differential duty, amount of fine and the amount of penalty.

17. However, at this stage, Mr. Amar Dave, Id. Senior Counsel submits it is relevant to point out that in a recent decision of this Court in ***S.K. Overseas v. Union of India***, [2024 (388) E.L.T. 73 (Del.)], this very circular *i.e. Circular No. 35/2017-Customs* has been considered and the Court has observed as under:



“2. The issues involved in the present petition are covered by the order passed today in W.P.(C) 15729/2023 captioned M/s Shanus Impex v. Union of India and Ors.

3. In terms of the said order, paragraph 2 of the Circular No.35/2017-Cus dated 16.08.2017 (hereafter ‘the impugned Circular’) to the extent it curtails the discretion of the adjudicating authority, was set aside as being ultra vires to the provisions of the Customs Act, 1962. In view of the said decision, the petitioner’s challenge to the impugned Circular does not survive.

4. The petitioner impugns an order dated 02.12.2023 (hereafter ‘the impugned order’) passed by respondent no.6 directing provisional release of the goods on the condition that the petitioner furnish a bond equivalent to the value of seized goods, ₹2,62,05,685/- (Rupees two crores sixty-two lacs five thousand six hundred and eighty-five only) and on making a security deposit of ₹3,14,46,822/- being 120% of the said value.

5. **A plain reading of the impugned order indicates that the said conditions were imposed in the light of paragraph 2.1 and 2.2 of the impugned Circular issued by the Central Board of Excise and Customs. Paragraph 2 of the impugned Circular, which indicates the conditions on which the provisional release of the goods can be granted, was declared as void by a Coordinate Bench of this Court in Additional Director General (Adjudication) v. M/s Its My Name Pvt. Ltd.: Neutral Citation No.2020: DHC:2014-DB. As noted above, paragraph 2 of the impugned Circular to the extent it curtails the decision of the adjudicating authority has been set aside by an order in W.P.(C)15729/2023 captioned M/s Shanus Impex v. Union of India and Ors.**

6. In view of the above, since the impugned order has been passed on the basis of paragraph 2 of the impugned Circular, the same is liable to be set aside.”



18. As can be seen from the above order, it is clear that in the decision in *Additional Director General (Adjudication) v. Its My Name Pvt. Ltd. [2021 (375) E.L.T. 545 (Del.)]*, paragraph 2 of the *Circular No. 35/2017-Customs* was declared void by the Coordinate Bench of this Court. Paragraph 2 of the said Circular to the extent it curtails the decision of the Adjudicating Authority has been set aside in *M/s Shanus Impex v. Union of India and Ors., (2024) 15 Centax 129 (Del.)* Even in the impugned provisional release order, paragraph 2 of the same circular is relied upon to justify the said order. Thus, the discretion for imposition of conditions cannot be taken away. The relevant portion of the provisional release order is extracted below:

“7. Further, it has been communicated by DRI/HQ/New Delhi, vide letter F. No. DRI/MZU/F/Int-20/2025/1556-1557 dated 21.07.2025, provisional release of the goods seized under the aforesaid Seizure Memorandum dated 01.07.2025 may be considered in terms of in terms of the Section 110AA of the Customs Act, 1962 read with the Notification no 28/2022-Customs dated 31.03.2025, subject to the provisions of section 110A of the Customs Act, 1962 read with Board's Circular No. 35/2017, dated 16.08.2017, by taking suitable Bond and Bank Guarantee.”

19. The question as to whether there is under-declaration or not is yet to be adjudicated. At this stage, the goods cannot be permitted to be seized perpetually especially, considering that these are perishable goods. The imports itself may come to a standstill if the conditions are not relaxed.

20. Under these circumstances, this Court is of the opinion that the approach as followed in the decision in *Rocktek Infra Services Pvt. Ltd. (Supra)* as also in *B.M.S. Enterprises (Supra)* deserves to be followed in the present case. In



Rocktek Infra Services Pvt. Ltd. (Supra), this Court has held as under:

“13. The Customs Department has already accepted the prayer for provisional release. The issue is only in respect of the conditions that are to be imposed. The Court has considered the total value of the goods and the amount of the Bank Guarantee. The calculated amount of the bank guarantee would be substantial and may almost constitute 70-80% of the value of the goods itself. The imposition of conditions being a discretionary matter, in the facts of this case, this Court is of the opinion that it would be just and fair that apart from the Bond which as been directed, the Bank Guarantee to the tune of 30% of the differential duty be furnished by the Petitioner. Ordered accordingly.”

21. In **B.M.S. Enterprises (Supra)**, this Court has held as under:

“12. So that future imports of the Petitioner of the very same goods is not thwarted, if any future imports are made by the Petitioner (i) of the very same goods; and (ii) from the same manufacturer; the Customs Department shall provisionally release the goods on the Petitioner furnishing a Provisional Duty Bond of the assessable value of the concerned Bill/s of Entry, as well as furnishing a Bank Guarantee for 50% of the differential duty. It is clarified that the Bank Guarantee will not be required to be furnished for any anticipated redemption fine and/or anticipated penalties. Obviously, for future imports also, Department will have to issue separate Show Cause Notices and take them to their logical conclusion.”

22. Bearing the above legal position in mind as also the **Circular No. 35/2017-Customs** and the facts of the present case, the following factors are considered and directions are issued as under:

- i) The amount of Rs.3.75 crores stands deposited by the Petitioner;



- ii) Insofar as the bond is concerned, the same would be executed by the Petitioner, for the entire amount;
 - iii) Insofar as the bank guarantee/security deposit is concerned, the same is reduced to 50% of the differential duty.
 - iv) Insofar as the amount of Rs.3.75 crores which is paid by the Petitioner under protest is concerned, the same shall be retained by the Customs Department in a fixed deposit;
23. Mr. Dave submits that there are further consignments which have arrived and are pending for release awaiting orders in this matter. Accordingly, considering the goods are perishable goods, insofar as the consignments which have already arrived in India are concerned, the same shall be released on the same conditions – viz., Bond for the entire amount as per the Department and Bank Guarantee for 50% of the differential duty. Subject to the said conditions being fulfilled, all the consignments shall be released. **CM APPL. 48296/2025** is disposed of.
24. Let a counter affidavit be filed within a period of four weeks.
25. List the matter on the date fixed *i.e.*, 9th September, 2025.
26. Order *dasti*.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

AUGUST 7, 2025

Rahul/ck