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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 13th August, 2025

+ **W.P.(C) 8849/2025**

M/S. NAGESWARA TRADE

.....Petitioner

Through: Mr. Priyadarshi Manish, Ms. Anjali Jha
Manish and Mr. Shreyansh Kushwaha,
Adv.

versus

JOINT COMMISSIONER OF CUSTOMS

.....Respondent

Through: Mr. Piyush Beriwal, SPC with Ms.
Jyotsna Vyas & Ms. Ruchita Srivastava,
Adv. for R-1 to 3 (9910396352)

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+ **W.P.(C) 5543/2025**

M/S NAGESWARA TRADE

.....Petitioner

Through: Mr. Priyadarshi Manish, Ms. Anjali Jha
Manish and Mr. Shreyansh Kushwaha,
Adv.

Versus

COMMISSIONER OF CUSTOMS & ORS.

.....Respondents

Through: Mr. Piyush Beriwal, SPC with Ms.
Jyotsna Vyas & Ms. Ruchita Srivastava,
Adv. for R-1 to 3 (9910396352)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 34812/2025 in W.P.(C) 5543/2025

2. Allowed, subject to all just exceptions. The application is disposed of.

W.P.(C) 8849/2025

W.P.(C) 5543/2025

3. The present petitions have been filed by the Petitioner – M/s.



Nageswara Trade under Articles 226 and 227 of the Constitution of India, *inter alia*, seeking issuance of an appropriate writ directing the Respondents to set aside the seizure memo dated 2nd January, 2025 *vide* which the goods of the Petitioner imported against bill of entry No. 5518018 dated 10th September, 2024 has been seized.

4. In effect, the challenge in the present petitions is to the seizure of the Petitioner's multi-functional device/ multi-functional printer and photocopier machine without assigning reasons for the same. In fact, Mr. Priyadarshi Manish, Id. Counsel for the Petitioner points out that the seizure memo itself does not mention as to what is the violation by the Petitioner.

5. The Petitioner prays for release of goods in ***W.P.(C) 5543/2025*** in the following terms:-

“(a) Issue a writ of certiorari or any appropriate writ, order or directions to the Respondents to set-aside the seizure memo dated 02.01.2025 vide which the goods imported against Bill of Entry No.5518018 dated 10.09.2024, has been seized; and/or

(b) Issue a writ of certiorari or any appropriate writ, order or directions to the Respondents to release the seized imported goods against Bill of Entry No.5518018 dated 10.09.2024 unconditionally; and/or

(c) Issue a writ of mandamus to direct the respondent to issue the detention certificate for waiver of the damages and detention charges from the date of detention to till the date of release of the consignment; and

(d) Pass such other order or further order or orders as this Hon'ble Court may deem fit and proper under the circumstances of the case.”

6. One of the contentions of Id. Counsel for the Petitioner is that the seizure memo dated 2nd January 2025 has been provided to the Petitioner only



on 28th March 2025 despite the seizure having been carried out in September 2024 and the same is not a valid seizure memo.

7. In writ petition *i.e.* **W.P.(C)-5543/2025**, an application being **CM APPL. 34812/2025** was moved seeking interim relief and provisional release of the goods which were seized *vide* seizure memo dated 2nd January 2025. The said application was considered on 29th May 2025 and the following order was passed by this Court:-

“2. *The present application under Section 151 of CPC has been filed by the Applicant/Petitioner seeking provisional release of the goods that were seized vide seizure memo dated 2nd January, 2025. A similar application, being C.M.No.25193/2025, has already been filed for the same interim relief.*

3. *Mr. Beriwal, ld. Standing Counsel for Respondent-Customs Department submits that the reason why the goods have not been released has been communicated to the Petitioner on 10th September, 2024. The same is as under:*

The screenshot displays the 'Indian Customs EDI System - Imports V1.5' interface. The header shows the date '29/05/2025' and time '02:47:45 pm'. The location is 'ICD PATPARGANJ, GAZIPUR, NR GAZIPUR BUS DEPOT, ND'. The interface includes a menu bar with options like 'Master', 'Invoice', 'Items', 'Dept comments', 'Exam order', 'Queries', 'iGM', 'Cont', 'eXAm', 'instr', 'licNce', 'dUty', 'Gpr7', 'dutyfg', and 'Others'. Below the menu, there are fields for 'Enter BE No: 811008', 'Date: 12/09/2024', 'CC: N', and 'Type: H'. The main area is an 'Editor' window containing the following text:

Query Ser No : 1
Officer ID : *****
Date of Entry : 10/09/2024
Status : Confirmed

Query Text :

AS PER FTP 2.31 (I AND II), IMPORT OF ALL SECOND-HAND GOODS (INCLUDING REFURBISHED/RE-CONDITIONED SPARES) OTHER THAN CAPITAL GOODS ARE RESTRICTED. CRO, 2021 STATES THAT ELECTRONICS AND IT GOODS (NEW AS WELL AS USED/REFURBISHED/RECONDITIONED) ARE RESTRICTED FOR IMPORT AND REQUIRE BIS. PLEASE CONCERN.

Reply to the Query : Reply Date 12-09-2024

R/Sir, Goods are second hand machine. Kindly give us 1st check for identity establishment.

At the bottom of the editor window, there are buttons for 'OK', 'Cancel', and 'Search'.

The relevant portion of the same is also extracted for



ready reference:

“As per [FTP 2.31](#) (I and II), import of all second-hand goods (including refurbished/ re-conditioned spares) other than capital goods are restricted. CRO, 2021 states that electronics and IT goods (new as well as used/ refurbished/ reconditioned) are restricted for import and require BIS. Please concern”

4. Under such circumstances, the Court is of the opinion that the present prayer can also be sought before the Respondent Authority. In view thereof, the Petitioner is permitted to seek provisional release before the Authority itself. Let the said request be considered and an order be passed by the Customs Department expeditiously.

5. All right and remedies are left open. Application is disposed of in the above terms.”

8. Subsequent to the above directions, wherein this Court directed the Customs Department to pass an order on provisional release of the goods, the provisional release order dated 16th June 2025 (hereinafter, ‘*impugned order*’) has now been passed by which, the prayer for provisional release has been rejected on the ground that the goods in question being multi-functional devices are prohibited unless the importer has a Bureau of Indian Standards (hereinafter, ‘*BIS*’) registration or specific exemption from the Ministry of Electronics and Information Technology.

9. The Customs Department have refused provisional release by applying ***Circular No. 35/2017-Customs*** dated 16th August, 2017 (hereinafter, ‘*circular*’) in the following terms:-

“10.5 In view of the above, I am of the considered opinion that the imported goods are prohibited and liable for confiscation in the light of the Customs Act,



*1962 and other allied Acts as discussed supra subsequently attracting penal provisions on the importer under Act *ibid*.*

10.6 This attempt to import these goods into India renders the goods liable for confiscation under section 111(d) of the Customs Act, 1962. Further, the importer also appears to be liable for Penalty under section 112(a)(i) of the Customs Act, 1962. Since, the matter is pending for Adjudication, decision regarding the above provisions will be made by the competent authority in due course.

10.7 I also have carefully considered the request of the importer for provisional release of seized goods. I find that Central Board of Indirect Taxes & Customs has prescribed guidelines for provisional release of goods pending adjudication under Section 110A of the Customs Act, 1962, vide Circular No. 35/2017 - Customs dated 16th August, 2017. The relevant provisions of the circular are reproduced as under:

2. While provisional release of seized imported goods under Section 110A of the Customs Act, 1962 may normally be considered by the competent adjudicating authority upon a request made by the owner of the seized goods, provisional release shall not be allowed in the following cases.

(i) Goods prohibited under the Customs Act, 1962 or any other Act for the time being in force;

(ii) Goods that do not fulfill the statutory compliance requirements / obligations in terms of any Act, Rule, Regulation or any other law for the time being in force;

(iii) Goods specified in or notified under Section 123 of the Customs Act, 1962;

(iv) Where the competent authority, for



reasons to be recorded in writing believes that the provisional release may not be in the public interest.

From a plain reading of the above circular, it is evident that the goods which are prohibited and such goods provisional release of which may not be in public interest, shall not be allowed to release provisionally. Accordingly, I find that the request of the importer regarding provisional release, is not just and legal and thus, not maintainable in the eyes of law. After thoroughly going through the representation / documents submitted by the petitioner/importer, the facts emerged during the investigation and keeping in view the legal provisions, I have considered the representation of the importer carefully and arrived at the opinion that due to various factors such as the goods being prohibited in nature and being hazardous for human use, the provisional release of the impugned goods can not be accorded.

Order

Keeping in view of the above legal provisions, the request/ prayer of the importer for provisional release of the goods, is rejected.”

10. The submission of Id. Counsel for the Petitioner is that the said circular could not have been applied as the same is a circular which has been held to be void by a decision of a Coordinate Bench of this Court in *M/s Shanus Impex v. Union of India and Ors., (2024) 15 Centax 129 (Del.)*. Id. Counsel for the Petitioner further submits that these multi-functional devices are imported across the country and various Courts have permitted provisional release on reasonable terms and conditions.

11. On the other hand, Mr. Piyush Beriwal, Id. SPC for the Respondents submits that the Petitioner has not come with clean hands and ought to have



disclosed the earlier writ petition *i.e.* **W.P.(C)-5543/2025** which has been filed by the Petitioner in the new petition. In addition, it is submitted that since the devices are not BIS stamped and the same being prohibited goods, are not liable to be released at all.

12. Ld. SPC for the Respondent also relies upon Section 46(4A) of the Customs Act, 1962 as also the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 to argue that the goods are prohibited and hence, are also not liable to be released.

13. The Court has considered the matter. Section 110A of the Customs Act, 1962 reads as under:-

“[110A. Provisional release of goods, documents and things seized pending adjudication.—Any goods, documents or things seized under section 110, may, pending the order of the [adjudicating authority], be released to the owner on taking a bond from him in the proper form with such security and conditions as the [adjudicating authority] may require.]”

14. In the context of this provision, ***Circular No. 35/2017-Customs*** has already been considered by a Coordinate Bench of this Court in ***Additional Director General (Adjudication) v. Its My Name Pvt. Ltd. [2021 (375) E.L.T. 545 (Del.)]***. In the said decision, the Court has categorically held that the said circular goes beyond the provision and is, therefore, a void circular. The relevant paragraph of the said decision is set out below:

“51. The learned ASG also placed pointed reliance on Circular 35/2020-Cus supra, issued by the CBEC, para 2 of which absolutely proscribes provisional release of "goods prohibited under the Customs Act, 1962 or any other Act for the time being in force", "goods that do not fulfil the statutory compliance requirements/obligations



*in terms of any Act, Rule, Regulation or any other law for the time being in force; and "goods specified in or notified under Section 123 of the Customs Act, 1962". Mr. Ganesh relied on Agya Import Ltd¹⁰, which holds that para 2 of the said Circular was merely in the nature of a "general guideline", and did not incorporate any mandate. We, having perused para 2 of Circular 35/2017-Cus supra, vis-à-vis Section 110A of the Act, are not inclined to be so magnanimous. According to us, para 2 of Circular 35/2017-Cus is clearly contrary to Section 110A and is, consequently, void and unenforceable at law. It is not permissible for the CBEC, by executive fiat, to incorporate limitations, on provisional release of seized goods, which find no place in the parent statutory provision, i.e. Section 110A of the Act. Executive instructions may, it is trite, supplement the statute, where such supplementation is needed, but can never supplant the statutory provision. **By excluding, altogether, certain categories of goods, from the facility of provisional release, para 2 of Circular 35/2017- Cus supra clearly violates Section 110A, whereunder all goods, documents and things, are eligible for provisional release. Goods, which are eligible for provisional release under Section 110A of the Act, cannot be rendered ineligible for provisional release by virtue of the Circular. (Be it noted, here, that we refer to the "eligibility" of the goods for provisional release, as distinct from the "entitlement" thereof, which has to be determined by the adjudicating authority in exercise of the discretion conferred on her, or him, by Section 110A.)** Para 2 of Circular 35/2017-Cus, therefore, effectively seeks to 29 Lok Prahari v State of U.P., (2016) 8 SCC 389, which digests several earlier decisions. supplant Section 110A, to that extent, and has, therefore, to be regarded as void and unenforceable at law.”*

15. The said judgment has also been followed by a Coordinate Bench of



this Court in *Shanus Impex (supra)* wherein the Court has observed as under:

“5. Mr. Harpreet Singh, learned senior standing counsel appearing for the respondents submit that the challenge to paragraph 2 of the impugned Circular is covered by the decision of Additional Director General (Adjudication) v. M/s Its My Name Pvt. Ltd. (supra). He submits that the impugned order be set aside and the matter be remanded to respondent no.6 to decide afresh.

6. In view of the above, the present petition is allowed.

7. Paragraph 2 of the impugned Circular to the extent it curtails the discretion accorded to the adjudicating authority is set aside as being contrary to the Customs Act.

8. The impugned order is set aside and the petitioner’s application for the provisional release of the goods is restored before respondent no.6.

9. Considering that the goods involved are perishable, respondent no.6 is directed to decide the matter afresh and pass a speaking order within a period of four working days from date after hearing the petitioner.

10. The petitioner shall appear before respondent no.6 on 11.12.2023 at 10:30 a.m.

11. The pending application is also disposed of.

16. Under these circumstances, this Court is of the view that provisional release could not have been completely prohibited by the Customs Department. The Show Cause Notice (hereinafter, ‘SCN’) is stated to have already been issued by the Customs Department. In a recent decision of the Telangana High Court, in *W.P. No.2014/2024* titled *Arka Business Solution v. Superintendent of Customs* the Court has permitted release of similar goods on the following terms:

“Petition under Article 226 of the constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue



a Writ of Mandamus or any other appropriate writ or order or direction setting aside the Seizure Memo date 4/11/2023 issued by the 1st Respondent as being without jurisdiction and contrary to the Foreign Trade Policy, 2023-24 and consequently direct the 1st Respondent to forthwith release the Petitioner's imported consignment of Multi-Function Devices of 217 units under Bill of Entry dated 27/10/2023 bearing No.8487743.”

17. The Madras High Court in ***W.P. No.29673/2023*** titled ***M/s. Simple Machine v. Commissioner of Customs*** has also imposed similar conditions and permitted provisional release of the goods, in the following terms:

“(i) W.P.Nos.28817 and 30506 of 2023 are disposed of directing the petitioners to cause reply to the show cause notice issued to them and the respondent department is directed to consider the same and pass necessary orders within a stipulated time. As far as release of goods is concerned, the same shall be released provisionally.

(ii)W.P.Nos..29673, 27544, 27547, 27548, 28115, 28119, 29678, 29680, 29684 of 2023 & 30490, 30492, 30495, 30496, 30498, 30500, 30501 & 30503 of 2023 are allowed and the following order is passed:

(a) That there shall be a direction to the respondents to consider the plea of the petitioners to release the goods by way of provisional release on condition that, the petitioner shall pay/deposit the enhanced duty amount. On receipt of such enhanced duty amount paid by the petitioners, the goods in question shall be released within a period of three (3) weeks thereafter.

(b) For payment of such duty, quantification shall be made by the Customs forthwith within one (1) week from the date of receipt of a copy of this order. On receipt of such quantification, the payment shall be immediately made by the petitioners and on receipt of the payment in entirety, the goods shall be released as indicated above at the outer limit of three (3) weeks.



(c) It is made clear that this order will not stand in the way for Customs Department to go ahead with the further proceedings including the adjudication in the manner known to law.

(d) It is further made clear that in the earlier interim order passed in a related writ petitions by an another Division Bench of this Court, that demurrage charges till date for the goods was directed to be considered for waiver. In this regard, if any application is filed by the petitioners seeking such a waiver of demurrage charges, the same shall be considered and decided by the respondents objectively.

No costs. W.M.P.Nos.28415 and 30149 of 2023 are ordered and the other writ miscellaneous petitions are closed.”

18. After having considered the various conditions that have been imposed in similar judgments, this Court is of the opinion that the goods deserve to be released provisionally subject to compliance of following terms and conditions:

- i. The applicable duty shall be calculated by the Customs Department by 25th August 2025. Upon calculation of the applicable duty, the Petitioner shall deposit 50% of the same with the Customs Department.
- ii. The duty shall be determined taking the assessable value of the goods as Rs 47,56,947/-.
- iii. If any other duties and penalties are contemplated, a bond to the said effect by the Petitioner shall be executed.
- iv. Upon the above stated amounts, 50% of the duty and the bond being executed, the goods shall be released to the Petitioner within one week from the date of such execution.

19. The proceedings in the show cause notice shall continue in accordance



with law.

20. Accordingly, the present petitions are disposed of. Pending applications, if any, are also disposed of.

21. The next date of hearing stands cancelled.

**PRATHIBA M. SINGH
JUDGE**

**SHAIL JAIN
JUDGE**

AUGUST 13, 2025

kk/sk/ck