IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-08-2026

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THE HON'BLE MR.JUSTICE HEMANT CHANDANGOUDAR

WP No. 16262 of 2026

And WMP.Nos. 17456 to 17458 of 2026

M/s.Vimpro Tech
A-7, Thattanchavady Industrial Estate
Pondicherry- 605 009
By its Joint Managing Director R.B.Arvind.

..Petitioner(s)

Vs

1. The Commissioner of Customs (Gr.2)
   Chennai II (Import) Commissionerate
   No.60, Rajaji Salai, Customs House,
   Chennai-600 001.
2. The Addl.Commissioner of Customs (Gr.2)
   Chennai II (Import) Commissionerate
   No.60, Rajaji Salai, Customs House,
   Chennai-600 001.
3. The Assistant Commissioner of Customs (Gr.2)
   Chennai II (Import) Commissionerate
   No.60, Rajaji Salai, Customs House,
   Chennai-600 001.

..Respondent(s)

Writ Petition is filed under Article 226 of Constitution of India, praying for issuance of writ of Certiorarified Mandamus, calling for the records pertaining to impugned order dated 17.04.2026 in F.No.CUS/APR /BE / MISC/ 2354/ 2025-GR2 issued by the 3rd respondent and to quash the same, in so far as, the impugned order rejecting the provisional release of the goods imported vide Bill of entry No.4355530 dated 07.09.2025 is without jurisdiction, authority of law and against the various provisions of the Customs law and the Rules and Regulations made there under and also against the various judicial pronouncements rendered in this regard, with a consequent direction to provisionally assess and release the subject goods under import, vide Bill of Entry No.4355530 dated07.09.2025 in terms of sec.18 r/w.Sec.110A of the Customs act and also in terms of the judgement rendered by the Honble Supreme Court in the case of M/s.Navshakti Industries - 2011 (269) ELT (A-146) (SC) and also to issue necessary detention Certificate in terms of Reg.6 (1) of the Handling of Cargos under Customs Area Regulation, 2009, pending any further proceedings by the respondents.

For Petitioner: Mr. S.Baskaran

For Respondents: Mr. Saisrujan Tayi, SSC

ORDER

The petitioner has filed this writ petition challenging the order dated 17.04.2026 passed by the third respondent, rejecting the petitioner’s request for provisional release of the goods imported under Bill of Entry No.4355530 dated 07.09.2025.

2. The petitioner states that he is a manufacturer of various goods and had imported a consignment of plastic spare parts under the said Bill of Entry. The consignment arrived at Chennai Seaport and the Bill of Entry was filed on 07.09.2025. The goods were detained by the Customs authorities on the ground that the petitioner had misdeclared the goods. According to the department, the goods imported were plastic spares for lighters/lighter spare parts. The department further took the view that the goods fall under Chapter 96 of the Customs Tariff Act and not under Chapter 13, and therefore, the petitioner was liable to pay Basic Customs Duty at 10% instead of 5%. The petitioner thereafter filed an application seeking provisional release of the goods. The said application was rejected by the impugned order. Hence, the present writ petition.

3. Heard both sides and perused the materials available on record.

4. The impugned order shows that the petitioner's request for provisional release was considered with reference to CBIC Circular No.35/2017-Customs dated 16.08.2017. The Circular states that provisional release may not be appropriate in cases involving prohibited or restricted goods, non-compliance with statutory requirements, or where release of the goods may affect the investigation or public interest.

Section 110A of the Customs Act, 1962, specifically provides for provisional release of seized goods on such terms and conditions as may be imposed by the competent authority.

5. The Delhi High Court, in ***Additional Director General (Adjudication) v. Its My Name Pvt. Ltd., [(2021) 375 E.L.T. 545 (Del.)]***, considered the validity of the said Circular and held that executive instructions may supplement a statute, but cannot override or replace the statutory provision. Therefore, the Circular cannot take away the right of provisional release provided under Section 110A of the Customs Act. The request for provisional release has to be considered under Section 110A, while ensuring that the interest of the Revenue is protected.

6. In the present case, the petitioner's request was rejected on the ground that the goods appeared to have been imported in violation of DGFT Notification Nos.15/2023 and 36/2024-25, that there was a misdeclaration and that the investigation was still pending. According to the department, release of the goods at this stage may prejudice the investigation and defeat the enforcement of the import policy.

7. The learned counsel for the petitioner has, however, produced an official memorandum dated 26.06.2025 issued by the Under Secretary to the

Government, authorising the petitioner to import goods described as "Employ Plastic Shell and Spare Parts for manufacturing of Gas Lighter with Plastic Holder Tray". The said description appears to correspond with the nature of the goods imported by the petitioner.

8. Whether the goods imported by the petitioner are covered by the said authorisation and whether there was any misdeclaration or violation of the import policy are matters to be decided in the adjudication proceedings.

9. The question of classification of the goods and the consequential liability towards differential customs duty can also be decided by the competent authority in accordance with law. At this stage, the pendency of the investigation cannot, by itself, be a ground to deny provisional release when Section 110A specifically provides for such release.

10. The petitioner has relied upon the decision of the Delhi High Court in ***Navashakti Industries Pvt. Ltd. v. Commissioner of Customs, ICD, TKD, New Delhi***, **[2011 (267) E.L.T. 483 (Del.)]**, wherein provisional release of the goods was directed subject to furnishing security towards the differential duty.

11. The said decision was modified by the Hon'ble Supreme Court in ***Civil Appeal No.3940 of 2011, dated 04.05.2011***. The Hon'ble Supreme Court directed

release of the goods subject to furnishing a bank guarantee for 30% of the differential duty to the satisfaction of the Commissioner of Customs.

12. The Division Bench of this Court, in ***Commissioner of Customs, Tuticorin v. Empire Exports, [2013 (287) E.L.T. 41 (Mad.)]***, following the decision of the Hon'ble Supreme Court, directed provisional release of the goods subject to payment of the duty declared by the importer, payment of 30% of the differential duty and execution of a personal bond for the balance 70% of the differential duty.

13. In the present case, the petitioner has paid duty at 5%, whereas the department has taken the view that the goods are liable to duty at 10%. The question of the actual differential duty payable is yet to be decided in the adjudication proceedings.

14. In view of the above, this Court is of the view that the interest of the revenue can be protected by imposing appropriate conditions for provisional release. There is no need to keep the goods under detention until the completion of the adjudication proceedings.

15. Accordingly, the writ petition is allowed and the impugned order dated 17.04.2026 passed by the third respondent is set aside. The third respondent is directed to release the subject goods provisionally, subject to the following conditions;

(i) The petitioner shall pay duty at the rate of 10% on the value of the goods declared in the Bill of Entry, after giving credit for the duty already paid;

(ii) The petitioner shall execute a personal bond for the balance amount of differential duty that may be determined in the adjudication proceedings; and

(iii) The provisional release shall be without prejudice to the rights of the department to continue the investigation and complete the adjudication in accordance with law.

(iv). The third respondent shall also consider the petitioner's request for issuance of the necessary detention certificate under Regulation 6(1) of the Handling of Cargo in Customs Areas Regulations, 2009, on its own merits and in accordance with law.

(v). The above exercise shall be completed within a period of two weeks (2) from the date of receipt of a copy of this order.

(vi). It is made clear that the observations made in this order are only for deciding the issue of provisional release and shall not affect the adjudication proceedings relating to the classification of the goods, alleged mis-declaration, applicability of the DGFT notifications or the final liability towards customs duty.

(vii). Consequently, the connected miscellaneous petitions are closed. There shall be no order as to costs.

05-08-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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HEMANT CHANDANGOUDAR, J.

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