IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-09-2026

CORAM

THE HON'BLE MR.JUSTICE HEMANT CHANDANGOUDAR

WP No. 25055 of 2026
CNR: {HCMA011411132026}
and
WMP Nos.27348, 27350 and 27353 of 2026

M/s ASC Impex,
No.2712, B Type, Mathur, MMDA,
Mathur Main Road, Manali,
Chennai – 600068.
rep. by its Proprietor A.Selvakumar

..Petitioner(s)

Vs

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

2. The Additional Commissioner of Customs
   (Imports - Gr.3)
   Chennai II Import Commissionerate,
   Customs House, No.60, Rajaji Salai,
   Chennai – 600 001.

3. The Deputy Commissioner of Customs
   (Imports - Gr.3)
   Chennai II Import Commissionerate,
   Customs House, No.60, Rajaji Salai,
   Chennai – 600 001.

..Respondent(s)

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for records connected with the impugned provisional release order dated 15.05.2026 in F.No.GEN/ADJ/ADC/2026-GR 3, issued by the 3rd respondent herein and to quash the same to the extent of condition specified at para 5(a) of the said impugned Provisional Release order dated 15.05.2026 as arbitrary, onerous, illegal and unconstitutional for the purpose of granting provisional release of the seized goods, covered under bill of entry No.2565459 dated 10.06.2025 and consequently to modify the above said condition, for the purpose of provisional release of the goods in terms of various judicial pronouncements rendered by various Hon'ble High Courts and also the Hon'ble Apex and also to issue necessary detention certificate in terms of Reg.6(l) of the Handling of Cargos under Customs Area Regulation, 2009.

For Petitioner(s): Mr.S.Baskaran

For Respondent(s): Mr.S.Gurumoorthy
Senior Panel Counsel

ORDER

The petitioner challenges the order dated 15.06.2026 passed by the third respondent, insofar as it imposes the condition contained in paragraph 5(a) requiring the petitioner to furnish a bank guarantee for provisional release of the goods covered by Bill of Entry No.2565459 dated 10.06.2025. The petitioner contends that the said condition is arbitrary and onerous.

2. The petitioner imported Polyester Woven Fabric with PVC Coating under Bill of Entry No.2565459 dated 10.06.2025. The consignment arrived at Chennai but was not released on the ground of incorrect classification of the goods. The petitioner thereafter approached this Court by filing W.P.No.5424 of 2026 seeking release of the goods on the basis of the representation dated 25.09.2025 submitted by the petitioner. By order dated 13.02.2026, this Court

directed the respondents to consider the said representation. Pursuant thereto, the impugned order dated 15.06.2026 has been passed.

3. Heard the learned counsel appearing for the parties and perused the materials placed on record.

4. The learned counsel for the respondent-Department submitted that the condition requiring the petitioner to furnish a bank guarantee for an amount equivalent to the total differential duty involved, together with 20% of the assessable value of the goods, is in accordance with Circular No.35/2017-Cus., dated 16.08.2017.

5. In similar circumstances, this Court, in W.P.No.16262 of 2026, considered the question of the conditions that may be imposed while granting provisional release of imported goods. In that case, reliance was placed 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 was directed subject to furnishing security towards the differential duty.

6. The said order was subsequently modified by the Hon'ble Supreme Court in Civil Appeal No.3940 of 2011, by order 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.

7. Following the said decision of the Hon'ble Supreme Court, a Division Bench of this Court, in *Commissioner of Customs, Tuticorin v. Empire Exports*, [2013 (287) E.L.T. 41 (Mad.)], 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 remaining 70% of the differential duty.

8. In the present case, the petitioner has already paid 5% of the applicable duty and has undertaken to execute a personal bond for the balance duty, if any. The final duty liability is yet to be determined in the adjudication proceedings. Therefore, at this stage, the differential duty payable by the petitioner cannot be treated as finally determined.

9. The purpose of provisional release is to ensure that the goods are not unnecessarily detained during the pendency of investigation or adjudication, while at the same time adequately protecting the interest of the Revenue. The conditions imposed for provisional release must therefore be reasonable and proportionate to the circumstances of the case.

10. In the facts of the present case, the interest of the Revenue can be adequately protected by requiring the petitioner to pay the applicable duty on the declared value and execute a personal bond for the balance duty that may ultimately be determined in the adjudication proceedings. There is, therefore, no justification for insisting upon a bank guarantee in addition to such security, particularly when the final duty liability is yet to be determined.

11. This Court makes it clear that the question of classification of the imported goods and the actual duty liability has not been decided in this writ petition. Those issues are left open to be determined by the competent authority in the adjudication proceedings, in accordance with law.

12. Accordingly, the writ petition is allowed. The condition contained in paragraph 5(a) of the impugned order dated 15.06.2026, insofar as it requires the petitioner to furnish a bank guarantee, is set aside.

13. The respondents are directed to release the subject goods provisionally, subject to the following conditions:

(i) The petitioner shall pay the applicable duty on the declared value of the goods covered by Bill of Entry No.2565459 dated 10.06.2025, if the same has not already been paid.

(ii) The petitioner shall execute a personal bond for the differential duty that may ultimately be determined in the adjudication proceedings.

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

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

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

14. It is made clear that this order shall not be construed as expressing any opinion on the classification of the goods, the correctness of the declared value or the ultimate duty liability of the petitioner. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

18-09-2026

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

To

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   Chennai II Import Commissionerate,
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HEMANT CHANDANGOUDAR, J.

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