

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 60031 of 2026

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-333-2025 dated 21.01.2026 passed by the Commissioner of Customs (Appeals), Ludhiana]

M/s Global Copier System

17/12, Ward No. 09, Dev Colony, Rohtak,
Haryana-124001

.....Appellant

VERSUS

Commissioner of Customs, Ludhiana

Customs house, ICD-GRFL Complex,
G.T. Road, Sahnewal, Ludhiana, Punjab-141120

.....Respondent

APPEARANCE:

Shri Saurabh Kapoor, Ms. Muskaan Gupta and Ms. Tanya Kumar,
Advocates for the Appellant

Shri Anurag Kumar, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60303/2026

DATE OF HEARING: 18.03.2026
DATE OF DECISION: 13.04.2026

P. ANJANI KUMAR:

M/s Global Copier System, the appellant-importer challenges the impugned order dated 21.01.2026, upholding the order dated 15.09.2025 passed by the Joint Commissioner of Customs, Ludhiana rejecting the request of the appellant-importer for provisional release

of 230 nos. of second-hand Highly Specialized Equipment (HSE) Digital Multi-Function Print and Copying Machines imported by them.

2. Brief facts of the case are that the appellant imported 230 nos. of second-hand Highly Specialized Equipment (HSE) Digital Multi-Function Print and Copying Machines, valued at Rs.40,17,969/-, classifiable under CTE 84333100 and filed a Bill of Entry No.3552599 dated 29.07.2025 for clearance of the same. During the examination on first-check basis, it was observed that the appellant did not have an import authorization issued by DGFT and the registration with Bureau of Indian Standards. Chartered Engineer, who examined the cargo reported that the impugned goods were multi-functional devices that combines several functions into one device and are not covered under HSE. The impugned goods were seized on 14.08.2025 on the reasonable belief that they are liable for confiscation. The appellants requested for provisional release of the impugned goods vide letter dated 15.08.2025, which was rejected by the original authority vide order dated 15.09.2025. The order of the original authority was upheld by the impugned order. Hence, this appeal.

3. Shri Saurabh Kapoor, learned counsel for the appellants, assisted by Ms. Muskaan Gupta and Ms. Tanya Kumar submits that:

- The CRO 2012 refers to prohibition for import of goods without compliance to the Registration with BIS; the impugned goods having been specifically exempted (exempting HSE) are not subject to registration with the BIS.
- For the purpose of import and classification the same is governed by the ITC HS which specifically provides that the

import of the said goods is "Freely importable" as against the specified goods which require BIS registration.

- The local CE has not given any reasons for not agreeing with the description given by the Foreign Chartered Engineer who had specified the classification and value of goods at the time of export.
- Similar goods have been ordered to be cleared by the respective ports upon intervention by the hon'ble High Court duly affirmed by the hon'ble Supreme Court.
- The impugned order is liable to be set aside on the sole ground itself that the Respondent has failed to deal with the contentions raised at the time of personal hearing and further even the judgments referred in the show cause notice have to be dealt in judicious manner.

4. Learned Counsel further submits that Para 2.31 of Foreign Trade Policy 2023 categorizes "notified electronics/ IT goods as restricted"; the impugned order does not cite any notification declaring the impugned goods falling under CTE 84433100 as absolutely prohibited *per se*; mere requirement of an authorization or registration with BIS does not make the goods prohibited *per se*; Section 110A empowers provisional release pending adjudication; there is no bar as per the jurisprudence evolved on the subject on the provisional release of the goods; the original order or the impugned order neither alleged nor record any findings on the fraud, concealment etc. by the appellants. He relies on the following cases:

- M/s Akshaya Copier Solutions – Telangana High Court order dated 20.01.2026 in W.P. No.1516 of 2026.
- M/s Glamex – Madras High Court order dated 01.09.2025 in W.P. No. 32963 of 2025
- M/s HD Printers - Madras High Court order dated 15.10.2025 in W.P. No. 39010 of 2025
- M/s Skylark Office Machines - Madras High Court order dated 10.12.2025 in W.P. No. 48089 of 2025
- M/s Tulasi Enterprises - Madras High Court order dated 19.02.2026 in W.P. No. 6569 of 2026
- M/s Maruti Enterprises - Madras High Court orders dated 15.10.2025 & 19.09.2025 in W.P. No. 38999 of 2025 and W.P. No. 35987 of 2025
- M/s Nageswara Trade – Delhi High Court order dated 15.08.2025 in W.P. (C) No.8849/2025

5. Learned Counsel further submits that in many cases for example Arka Business Solutions- W.P. No.2014 and 843 of 2024 (Telangana HC), Simple Machines – (2024) 14 CENTAX 68 (Mad.) (Madras HC), Taanish Enterprises – W.P. No.29418 of 2024 (Madras HC), Unistar Enterprises- WRIT Tax No.1981 of 2025 (Allahabad HC), Genuine Copier Systems- W.P. No. 28241 of 2025 (Madras HC), Atul Automation- 2019 (365) ELT 465 (SC) affirmed by SC SLP (C) 13560/2024, Principal Commissioner, Kolkata (Provisional Release order) & P & H High Court (CWP 28333/2019; CWP 12962/2021), it was held that provisional release can be given in respect of goods involving identical allegations.

6. Shri Anurag Kumar, learned Authorized Representative for the Department reiterates the findings of the impugned order and submits that the appellants failed to fulfill the conditions of obtaining DGFT authorization and BAS registration and thus, the imported

goods are prohibited in terms of Section 2(33) as they are subjected to prohibition under any law; Hon'ble Supreme Court in the case of Om Prakash Bhatia – 2003 (155) ELT 423 (SC) held that restriction subject to conditions if not fulfilled renders the goods prohibited. Learned AR further submits that the exemption claimed by the appellants under S.O. 2844 (E); however, this exemption is only for HSE; the Chartered Engineer specifically concluded that the impugned goods are multifunctional devices and do not qualify to be called HSE. He submits that a prima facie case exists against the appellant and therefore, the seizure is justified.

7. Learned Authorized Representative for the Revenue further rebuts the grounds of appeal taken by the appellants submitting as under:

- The impugned order is a detailed speaking order passed after giving personal hearing to the appellants.
- In terms of DGFT Notification No.13/2024-25, electronic goods and IT goods under CRO 2021 are restricted and required DGFT authorization and their import without BIS registration is prohibited.
- The exemption contained under SO 2844 (E) is not available as the goods are not HSE as certified by the Chartered Engineer; the certificate issued by the foreign Chartered Engineer is only for the value of the goods and it cannot decide import restrictions in India.
- It is not correct to say that CBIC Instructions regarding the engagement of the Chartered Engineer were not followed; the

services of the Chartered Engineer were engaged as there was a doubt as to whether the goods were HSE or otherwise.

8. Learned Authorized Representative submits that the cases relied upon by the appellants are not applicable for the following reasons:

(i) In the case of Alka Business Solutions, the Hon'ble Court directed the authorities to verify whether the impugned goods were covered under HSE exemption. In the instant case as the Chartered Engineer confirmed, the issue of HSE is not relevant.

(ii) In the case of simple machines, Hon'ble Madras High Court held that the goods did not fall under Category 1 (b) of Para 2.31 but under Category 1 (d) and that the goods are not covered by CRO 2012. In the instant case, these issues are not present.

(iii) In the case of Tanish Enterprise, the decision was based on the report of Chartered Engineer which was in favour of the appellants therein whereas, in the instant case, the report of the Chartered Engineer is not in favour of the appellants.

(iv) Reliance on Genuine Copier System is misplaced as the decision in this case was based on the cases of A K Imports and Exports and Tanish Enterprise, which were distinguished in the impugned order.

(v) In the case of Unistar Enterprises, Hon'ble Allahabad High Court directed the authorities to decide the application of the appellant for provisional release whereas in the instant case,

the application for provisional release was considered and rejected.

(vi) Learned Commissioner (Appeals) has rightly observed that he is not obliged to follow the order dated 03.06.2025 passed by Additional Commissioner, Kolkata.

(vii) The case of Atul Automation Pvt. Ltd. (Final Order No.77912-77915/2025 dated 16.12.2025) by CESTAT, Kolkata is distinguishable on facts as the issue therein related to the cap on the import of machines more than 100 per unit model.

9. Learned Authorized Representative further relies on City Office Equipment – 2019 (367) ELT 920 (Mad.) and Best Mega International – 2021 (377) ELT 721 (Mad.) and pleads that the appeal needs to be summarily dismissed.

10. In rebuttal, learned counsel for the appellants submits that both the cases are wholly distinguishable on facts and hence cannot be applied to the present case; in case of Best Mega International (supra), the orders are interlocutory and hence have no precedential value; it was rendered in the context of Electronics and IT Goods (Compulsive Registration) Order 2012 whereas the present case is under CRO 2021 which is fundamentally different scheme. He submits that the case stands in a materially altered legal landscape post the authoritative pronouncement by the Hon'ble Supreme Court in the case of Delhi Photocopiers – 2022 (380) ELT A71 (SC) vide which Hon'ble Supreme Court has categorically permitted provisional release even in cases where the department asserts that goods are

prohibited. He further submits that the case of City Office Equipment (supra) is not relevant as there was no seizure in that case. He submits that the case of Atul Automation (supra) affirmed by the Hon'ble Supreme Court is most appropriate to the facts of the present case.

11. Heard both sides and perused the records of the case. The issue involved in the case is in a narrow compass as to whether the alleged non-compliance with the provisions of Para 2.31 of the FTP and CRO 2021 would dis-entitle the imported goods ineligible for provisional release. It is the argument of the department that the goods are not HSE as declared by the appellant-importer, in view of the certification by the Chartered Engineer and therefore require authorization from DGFT and registration with BIS. In the absence of such authorization and registration, the goods are rendered to be deemed as prohibited goods and therefore, learned adjudicating authority was within his right to deny the provisional release as requested.

12. The appellant submits that the ITC HS which governs the import specifically provides that the impugned goods are freely importable; Para 2.31 of FTP categorizes the notified electronics/ IT goods as restricted; It is not proved by the Revenue that the impugned goods falling under CTE 84433100 are prohibited *per se*; Revenue has not controverted the certificate given by the foreign Chartered Engineer while relying on the report given by the local Chartered Engineer and came to the conclusion that the subjected goods are prohibited in terms of Section 17(1) of the BIS Act, 2016d

and that the claim of the appellant on the applicability of SO 2844 (E) is proved wrong by the Chartered Engineer certificate. We find that as the final adjudication order is yet to be issued, we need not delve into the merits of the case and restrict ourselves to the provisional release. We find that learned counsel for the appellants submits that in many cases, it was held that non-compliance of Para 2.31 of FTP or CRO 2021 is not a bar to provisional release.

13. We find that Principal Bench of CESTAT, Delhi, in the case of Tasha Gold Pvt. Ltd. vide Final Order No.A/51595/2023 dated 05.12.2023, held that:

13. The Appellant relied on the judgment of the Hon'ble High Court of Delhi in Additional Director General (Adjudication) v. Its My Name Pvt. Ltd., 2021 (375) E.L.T. 545 (Del.) wherein it was held that Para 2 of Circular No. 35/2017 is contrary to the parent statute - Section 110A of the Customs Act and is void.

14. The Appellant placed reliance on the judgement of the Hon'ble High Court of Bombay in Sidharth Vijay Shah v. Union of India, 2021 (375) E.LT.53 (Bom.) in which it was held that no limitation was imposed in Section 110A that goods categorized as prohibited goods under Section 2(33) cannot be subjected to provisional release under Section 110A. It was also held that even filing of appeal before Hon'ble CESTAT cannot be a bar on order of provisional release.

15. It was submitted that adherence to the said Circular No. 35/2017 cannot be made to refuse provisional release of goods. Section 110A of the Customs Act provides that seized goods can be released and does not make any difference between prohibited and non-prohibited goods. The interpretation of Section 110A the Hon'ble Delhi High Court in Its My Name (supra) is reproduced below:

"48. Clearly, provisional release may be allowed, under Section 110A of the Act, of "any goods, documents or things seized". The Court, as the interpreter of the legislation, cannot profess to greater wisdom than the legislator. Where the Legislature has not thought it appropriate to limit, in any manner, the nature of goods, documents or things which may be provisionally released, under Section 110A, in our view, it is no part of the function of a Court to read, into the said statutory provision, any artificial limitation, not to be found therein."

(Emphasis supplied)

16. The Hon'ble High Court also opined that Section 110A the Customs Act does not distinguish between prohibited and non-prohibited goods and such distinction is found in Section 125 of Customs Act but even therein prohibited goods may be released on payment of redemption fine. The Appellant humbly states that it is entitled to provisional release of goods and more so when it has paid duty although it was not statutorily due. The impugned order denying provisional release is without legal basis/ and is liable to be set aside.

C. Goods can be categorised as "prohibited" only after adjudication-

17. Categorization of goods is a subject to adjudication and in regard to the fact of the present case, the customs authorities entertain such a view at the time of seizure does not make the goods prohibited goods. For seizure, the officer must have reason to believe that goods are liable for confiscation and in the instant case, it has been stated that goods are prohibited. However, it is submitted that such belief or act of seizure does not establish that the goods are prohibited goods.

14. We find that Hon'ble High Court of New Delhi in the case of Nageswara Trade while dealing with the import of identical items held that:

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 Ltd*¹⁰, 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."

15. We find that the respondents rely on the cases of Best Mega International and City Office Equipment (both supra). As regards the reliance on Best Mega International, the appellants submit that said decision was rendered in the context of the old regulations under CRO 2012 and that subsequent to the above decision, Hon'ble Supreme Court has allowed provisional release, in the case of Delhi Photocopiers – 2022 (380) ELT 471 (SC), holding that provisional release can be permitted even in cases where the department asserts that the goods are prohibited and are liable for confiscation. They further submit that the case of City Office Equipment is not applicable as in that case, no seizure was involved, the observations therein were mostly on the issue of writ jurisdiction and thirdly, it distinguishes Atul Automation case. We find that there is force in the argument of the appellant looking into the series of decisions given by various High Courts permitting provisional release of identical goods where identical allegations have been levelled. We find that these judgments were rendered relying on the decision of the Hon'ble Supreme Court in the case of Delhi Photocopiers (supra).

16. They also submit that in the impugned case, the appellants submit that the respondents have ignored the mandate given vide Circular No.7/2020-Cus dated 05.02.2020 that the services of local Chartered Engineer are required in cases where a pre-export inspection certificate issued at the time of export in the foreign country is not made available. In the instant case, the pre-export inspection certificate was given by the foreign Chartered Engineer. We find that in the impugned case, the certificate given by the

foreign Chartered Engineer was not controverted and was rejected by the authorities without giving any specific reasons. Moreover, as we have already observed the issue before us being restricted to the provisional release, we do not find it proper to go into the merits of the case at this juncture.

17. We find that Section 110A of the Customs Act, 1962 provides for provisional release of the seized goods and Section 125 *ibid* provides for imposition of redemption fine in lieu of confiscation. If a constricted view, as in the impugned orders, is taken, the relevance of provisional release and imposition of redemption fine becomes questionable. We find that taking such a constricted view is not the intention behind the provisions of the sections for the reason that the goods are prohibited more so, looking into the fact that the impugned goods are not prohibited *per se* by Customs Act or Tariff but have become prohibited goods by the deeming provision as per Section 2(33) of the Customs Act, 1962. Moreover, we find that as of now, the goods are only alleged to be prohibited goods. No competent authority has passed an order confirming the same to be prohibited goods. In the absence of the same, rejection of the request for provisional release for the reason that the goods are prohibited is not acceptable.

18. In view of the above and in view of the various cases cited by the appellants, we find that the impugned goods, though deemed to have been prohibited, can be ordered to be released provisionally subject to some conditions and no great harm to the public interest, health and safety has been brought out in the impugned orders.

19. In view of the above, the appeal is allowed and the impugned goods are ordered to be released provisionally subject to:

- (i) the payment of applicable duty on the imported goods
- (ii) submission of Bond for a value equivalent to the value of the imported goods and
- (iii) submission of a Bank Guarantee of a value equivalent to 30% of the applicable duty on the impugned goods

20. It is directed that the goods may be released within two weeks after the compliance of the above said conditions.

(Order pronounced in the open court on 13/04/2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)