

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76064 of 2025

(Arising out of Provisional Release Order No. KOL/CUS/PORT/PR.COMMR/GR.5/24/2025 dated 13.05.2025 passed by the Principal Commissioner of Customs (Port), Custom House, 15/1, Strand Rd., Kolkata – 700 001)

M/s. Atul Automation Private Limited

: Appellant

Office No. 722, The Summit Business Bay,
Andheri Kurla Road, Behind Guru Nanak Petrol Pump,
Andheri East, Mumbai – 400 093

VERSUS

Principal Commissioner of Customs (Port)

: Respondent

Custom House, 15/1, Strand Road,
Kolkata – 700 001

WITH

Customs Appeal No. 76066 of 2025

(Arising out of Provisional Release Order No. KOL/CUS/PORT/PR.COMMR/GR.5/19/2025 dated 02.05.2025 passed by the Principal Commissioner of Customs (Port), Custom House, 15/1, Strand Rd., Kolkata – 700 001)

M/s. Ace Office Solutions

: Appellant

Office No. 722, 7th Floor, The Summit Business Bay,
Andheri East, Mumbai – 400 093

VERSUS

Principal Commissioner of Customs (Port)

: Respondent

Custom House, 15/1, Strand Road,
Kolkata – 700 001

WITH

Customs Appeal No. 76069 of 2025

(Arising out of Provisional Release Order No. KOL/CUS/PORT/PR.COMMR/GR.5/23/2025 dated 13.05.2025 passed by the Principal Commissioner of Customs (Port), Custom House, 15/1, Strand Rd., Kolkata – 700 001)

M/s. Teqnozo Ceramics Private Limited

: Appellant

Office No. 722, 7th Floor, The Summit Business Bay,
Andheri East, Mumbai – 400 093

VERSUS

Principal Commissioner of Customs (Port)

: Respondent

Custom House, 15/1, Strand Road,
Kolkata – 700 001

AND

Customs Appeal No. 76071 of 2025

(Arising out of Provisional Release Order No. KOL/CUS/PORT/PR.COMMR/GR.5/18/2025 dated 30.04.2025 passed by the Principal Commissioner of Customs (Port), Custom House, 15/1, Strand Rd., Kolkata – 700 001)

M/s. Mech and Tech

Office No. 722, The Summit Business Bay,
Andheri Kurla Road, Behind Guru Nanak Petrol Pump,
Andheri East, Mumbai – 400 093

: Appellant

Principal Commissioner of Customs (Port)

Custom House, 15/1, Strand Road,
Kolkata – 700 001

: Respondent

APPEARANCE:

Shri Srikant Kumar Mohapatra, Advocate,
Along with Shri Arijit Goswami, Advocate,
For the Appellant(s)

Shri Subrata Debnath, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 77912-77915 / 2025

DATE OF HEARING/DECISION: 16.12.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

These appeals have been filed against the Provisional Release Orders bearing Nos. KOL/CUS/PORT/PR. COMMR/GR. 5/24/2025 dated 13.05.2025, KOL/CUS/PORT/PR. COMMR/GR. 5/19/2025 dated 02.05.2025, KOL/CUS/PORT/PR. COMMR/GR. 5/23/2025 dated 13.05.2025 & KOL/CUS/PORT/PR. COMMR/GR. 5/18/2025 dated 30.04.2025 passed by the Ld. Principal Commissioner of Customs, Port Commissionerate, Custom House, Kolkata – 700001 wherein, while allowing provisional release of four consignments of "Used Highly Specialized Equipment Digital Multifunction Print &

Copying Machine" imported by the Appellant, the Ld. Principal Commissioner has withheld provisional release of 21 pieces, 28 pieces, 7 pieces and 7 pieces of multifunction print and copying machines respectively, totalling 63 pieces.

1.1. The issue involved being common, the appeals are taken up together for disposal by way of a common order.

2. The facts of the case are that M/s. Atul Automation Private Limited, Mumbai, M/s. Ace Office Solutions, Mumbai, M/s. Teqnozo Ceramics Private Limited, Mumbai and M/s. Mech and Tech, Mumbai, the appellants herein, have imported the said consignments and filed Bills of Entry for clearance thereof, as under: -

Sl. No.	Bill of Entry No. & Date	Name of the importer
1.	8465935 dtd. 20.02.2025	Atul Automation
2.	8178012 dated 04.02.2025	Ace Office Solutions
3.	8872492 dated 13.03.2025	Teqnozo Ceramics Pvt. Ltd.
4.	8316167 dated 12.02.2025	M/s. Mech and Tech

2.1. The Bills of Entry were sent for 100% examination, in presence of Empanelled Government Approved Chartered Engineer. The Shed Officers examined the consignments in presence of a Chartered Engineer and the Assistant/Deputy Commissioner of Customs. On such examination, the imported goods were found old and used, as declared, and the description, make, model and total quantity of the goods tallied with the declaration.

2.2. The consignments were subsequently seized by the officers of SIIB, Custom House, Kolkata, under Section 110(1) of the Customs Act, 1962 on the premise that the import of the subject goods is restricted and that the goods were liable for confiscation under the provisions of Section 111 of the said Act.

3. Due to the fact that the completion of the proceedings would require a lot of time, to save demurrage, the appellants requested for provisional release of the goods against bond and bank guarantee.

4. The appellants were verbally informed that in view of the Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order, 2021 dated 01.07.2021, particularly the exemption given to Highly Specialized Equipment (HSE) in paragraph 8 thereof, only 100 pieces of Highly Specialized Equipment (HSE) are allowed to be imported per model, per calendar year; as the goods imported by the appellants fell under the category of HSE, only those HSEs imported by the appellants in the subject consignments which do not exceed the model-wise quantity of 100 pieces, imported during the relevant year through Kolkata Port collectively by all the importers, shall be released provisionally and the remaining goods shall continue to remain seized. Although the appellants were of the opinion that the model wise restriction of 100 pieces per calendar year is applicable for each importer, not for all imports by all the importers taken together and disputed the view taken by the Customs in this regard, with a view to get the seized goods released without further delay, the appellants agreed to such provisional release.

5. Thereafter, the impugned Provisional Release Orders bearing Nos. KOL/CUS/PORT/PR. COMMR/GR. 5/24/2025 dated 13.05.2025, KOL/CUS/PORT/PR. COMMR/GR. 5/19/2025 dated 02.05.2025, KOL/CUS/PORT/PR. COMMR/GR. 5/23/2025 dated 13.05.2025 & KOL/CUS/PORT/PR. COMMR/GR. 5/18/2025 dated 30.04.2025 came to be passed, whereby provisional release of 63 pieces of HSEs imported by the appellants in the subject consignments was withheld; the remaining goods were ordered to be released provisionally against P.D. Bond and bank guarantee. The provisional release of the 63 pieces has been withheld by the Ld. Principal Commissioner, holding that the model which has crossed the maximum import limit of 100 Pcs. per calendar year per model should be held detained/seized under Section 110 of the Customs Act, 1962 and the remaining quantities which are within the maximum permissible quantities should be provisionally released subject to this provisional release order.

5.1. Aggrieved by the said orders withholding provisional release of 63 pieces of HSEs imported in the subject consignments, the present appeals have been filed by the appellants.

6. At the outset, the Ld. Counsel appearing on behalf of the appellants mentioned that earlier, a consignment of similar goods had been seized by the Kolkata Customs authorities, for which the importer had moved a Writ Petition before the Hon'ble Calcutta High Court; the said litigation went to the Hon'ble Apex Court. He states that finally, in terms of order passed by the Hon'ble Supreme Court, the seized goods were provisionally released against bond and bank guarantee; the said release was subject to the

orders to be passed by the Department in adjudication. He submits that all consignments of similar goods, imported by various other importers have been / are being released provisionally by Kolkata Customs against P.D. Bond and bank guarantee.

6.1. The various arguments advanced by the Ld. Counsel representing the appellants herein are summarized as follows: -

- (i) The impugned orders have been passed by the respondent authority by an incorrect interpretation and/or implementation of the legal provisions, without considering the submissions made by the appellants, by misdirecting himself in point of law and facts, which is ex-facie not legally sustainable.
- (ii) That the impugned orders of the respondent authority are illegal and discriminatory against the appellants as would be evident from the copy of a Show Cause Notice issued on 17.03.2025 to M/s. Amar Enterprises. The following is reproduced from pages 6 and 7 of the said SCN:

"7. Thereafter, in order to seek necessary clarification in respect of the possible violation of the various policy angles associated with the import of the subject goods i.e. 'OLD & USED MULTI-FUNCTION COPYING PRINTER MACHINE' in the instant case, letter dated 23.04.2024 was sent to the Ministry of Electronics and Information Technology (MeitY) [RUD 5]. The Ministry of Electronics and Information Technology (MeitY), vide their Office Memorandum bearing F.No.W-47/21/2022-IPHW dated 10.07.2024 [RUD 6] furnished the following clarification / comments in this regard: -

2.(i). For the purpose of imports under HSE, the criteria of 100 unit per model per year is meant for import of a particular model through all the ports by all the importers/ IEC holders, collectively.

(ii). Customs Vide D.O letter No 37II)12013 dated 18.12.2013 and D.O. letter W-47 /21/2022-IPHW dated 15.09.2023 has been requested to evolve a centralized process for monitoring the aspect that an HSE is imported in less than 100 units per model in a year. MeitY has also requested JS, Customs vide OM of even number dated 13.06.2024 to issue instructions to field officers regarding the mechanism for HSE clearances.

(iii). Further, it may be noted that "Printers/ Multi-Function Devices (MFD)/Plotters" are notified under "Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2021" ("CRO"). As per the provisions of BIS Act, 2016, no person shall manufacture, import, distribute, sell, hire, lease, store or exhibit for sale any such goods notified under CRO without a Standard Mark, except under a valid licence. Further, the import of second-hand goods is restricted and requires authorization from DGFT as per the provisions of para 2.31 for Foreign Trade Policy irrespective of falling under HSE criteria."

- (iii) From the above, it is abundantly clear that way back in 2013, Customs was advised to evolve a process for centralised monitoring the aspect that HSEs are imported in less than 100 units per model in a year throughout India, which has not been done even after 11 years. As a result, different policies have been adopted at different locations in India. Whereas in Chennai, this aspect of restricting year-wise total import of a particular model of HSE does not appear to be monitored; in Kolkata, it is being done by counting the numbers imported only in Kolkata which is against the specific opinion given in the O.M. dated 10.07.2024, at para 2.(i), that "For the purpose of imports under HSE, the criteria

of 100 unit per model per year is meant for import of a particular model through all the ports by all the importers/ IEC holders, collectively." As a result, the appellants are victims of discrimination whereas other importers at the other ports are not being subjected to the limit prescribed for each model; the goods imported by them have not been released.

- (iv) When every manufacturer is permitted to manufacture up to 99/100 pieces of every model of HSE each year without complying with the mandatory registration under BIS, for the sake of natural justice, every importer should also be allowed to import up to 99/100 pieces of every model of HSE each year.
- (v) The fact that in other ports, the restriction in respect of model-wise limit is not being imposed would be evident from the copies of Bills of Entry No.4638429 dated 22/07/2024 and No.4838471 dated 02/08/2024, both of Chennai Customs House. From the same, it can be seen that 99 pieces and 100 pieces of the same model of HSE i.e. "MITA TA 4012" have been allowed to be cleared by two different importers by Chennai Customs in the same year i.e. 2024;
- (vi) The items i.e. HSE being old & used when imported, import of which is restricted requiring licence, on several occasions the importers had to move application before the High Courts for provisional release, which was granted by the High Courts and even the Hon'ble Supreme Court, subject to the outcome of subsequent adjudication. However, while ordering release of

the HSEs provisionally, no such condition in respect of model-wise quantity was imposed by the courts.

- (vii) Implementation of any provision of law cannot be arbitrary, whimsical and discriminatory. Legal provisions of a country should be implemented in the same manner all over the country. If the condition of only 100 units per year, meant for import of a particular model through all the ports by all the importers collectively, is not being followed, because of the neglect and/or failure of the Customs Department to evolve a centralised process to do so, the appellant should not be discriminated with by counting the numbers of import of any particular model only in Kolkata.
- (viii) It is submitted that till such time a centralised monitoring process is evolved and implemented all over the country, no different approach should be taken in respect of the goods imported by the Appellants. The HSEs imported by them also should be ordered to be released provisionally so long model-wise quantity thereof, imported by them does not exceed the prescribed limit of 100 numbers in a year.
- (ix) The impugned order is otherwise also erroneous because, while ordering furnishing of "Provisional Duty Bond" and "Bank Guarantee", the amounts of such bond and bank guarantee have been decided considering the assessable value of the whole consignments, not of only the goods ordered to be released.

(x) By the said wrongful, biased and discriminatory order passed by the Respondent, the appellants have been irreparably prejudiced for no fault on their part and in any event the said order is unjust, oppressive, disproportionate, violative of principles of natural justice, unreasonable and against all canons of justice and equity in the facts and circumstances of the case and materials and evidence on record and is liable to be set aside for this reason alone.

6.2. In addition, the Ld. Counsel for the appellants drawn our attention to the decision passed by this Bench of the Tribunal, wherein, while deciding the Customs Appeal No. 75879 of 2025 filed by M/s. Arahant Automation against a similar Provisional Release Order passed by the respondent, the Tribunal has set aside the withholding of 131 pieces of HSEs on the same ground as in the present cases and ordered for provisional release thereof against P.D. Bond & Bank Guarantee, vide *Final Order No. 76723 of 2025 dated 04.07.2025*.

6.3. In view of the above submissions, the Ld. Counsel for the appellants prayed for setting aside the impugned orders withholding of provisional release of 63 pieces Used Digital Multifunction Print & Copying Machines and for passing an order directing immediate provisional release of the said goods.

7. On the other hand, the Ld. Authorized Representative of the Revenue reiterated the findings in the impugned orders. Accordingly, he prayed for rejection of the instant appeals.

8. Heard both sides and perused the records.

9. We find that by way of the present appeals, the appellants have challenged the Provisional Release Orders passed by the respondent authority withholding the provisional release of 63 pieces Used Digital Multifunction Print & Copying Machines imported by them. Admittedly, the goods imported by the appellants are "Used Highly Specialized Equipment Digital Multifunction Print & Copying Machine", which is a restricted item. We find that the Ministry of Electronics and Information Technology (MeitY), vide their Office Memorandum bearing F.No.W-47/21/2022-IPHW dated 10.07.2024 has issued the following clarification / comments in this regard: -

"2.(i). For the purpose of imports under HSE, the criteria of 100 unit per model per year is meant for import of a particular model through all the ports by all the importers/ IEC holders, collectively.

(ii). Customs Vide D.O letter No 37II)12013 dated 18.12.2013 and D.O. letter W-47 /21/2022-IPHW dated 15.09.2023 has been requested to evolve a centralized process for monitoring the aspect that an HSE is imported in less than 100 units per model in a year. MeitY has also requested JS, Customs vide OM of even number dated 13.06.2024 to issue instructions to field officers regarding the mechanism for HSE clearances."

9.1. However, it is observed that no such centralised monitoring mechanism has been evolved by the Customs department even after 12 years. As a result, different practices have been adopted at different Custom Houses in India. It has been pointed out by the appellant that in Chennai, this aspect of restricting year-wise total import of a particular model of HSE does not appear to be monitored, whereas in Kolkata the same is being done, by counting the numbers imported and that such a practice is in existence only in Kolkata.

10. We also take note of the fact that earlier, a consignment of similar goods had been seized by the Kolkata Customs authorities. The importer had moved a Writ Petition before the Hon'ble Calcutta High Court and the litigation went to the Hon'ble Apex Court. Finally, in terms of order passed by the Hon'ble Supreme Court, the seized goods were provisionally released against bond and bank guarantee; the said release was subject to the final orders to be passed by the Department in adjudication.

10.1. The Order passed by the Hon'ble Single Judge of the Calcutta High Court is reproduced below for ready reference: -

"Heard learned advocates appearing for the parties.

Petitioner has filed this writ petition being aggrieved by the inaction on the part of the respondent Customs authority concerned in considering and disposing the application of the petitioner dated 28th February, 2024, being Annexure P-8 to the writ petition for release of the detained xerox machine in question On provisional basis. In support of his contention, Mr. Banerjee, learned advocate representing the petitioner relies on two unreported decisions of the Hon'ble Madras High Court and the Hon'ble Telangana High Court dated 23rd November, 2023 and 8th February, 2024 respectively in the case of M/s. Simnple Machines Vs. The Commissioner of Customs and in the case of M/s. A.K. Imports & Exports Vs. The Commissioner of Customs &Ors. in W.P No.29673 of 2023 and W.P No.2014 of 2024 respectively and prays for provisional release of the seized goods in question On similar terms and conditions.

Considering the facts and circumstances of the case and submission of the parties, this writ petition being WPA 6749 of 2024 is disposed of by directing

the respondent Commissioner of Customs (Port)/the authority concerned to intimate the petitioner on or before 5th April, 2024 the additional customs duty which shall be paid by the petitioner, within seven days from the date of receipt of such intimation to be issued by the respondent customs authority. In addition, petitioner will also provide a bank guarantee of worth 10% of the total price of the imported goods in authority will question. The respondent customs release the goods in question within ten days from the date of compliance of the aforesaid formalities by the petitioner. Provisional release of goods in question and be paid the additional customs duty to by the petitioner will be without prejudice to the rights of the parties in any subsequent proceedings by the authority concerned.

Accordingly, this writ petition being WPA 6749 of 2024 is disposed of."

10.1.1. We find that the above order passed by the Hon'ble High Court has also been affirmed by the Hon'ble Supreme Court.

10.2. From the above Order passed by the Hon'ble High Court, it is clear that used HSEs imported are to be released on execution of Bond and Bank Guarantee. We find that there is no quantity restriction fixed in the order passed by the Hon'ble Calcutta High Court. Following the Order of the Hon'ble High Court, as affirmed by the Hon'ble Apex Court, all consignments of similar goods, imported by various other importers are being released provisionally by Kolkata Customs against P.D. Bond & bank guarantee. However, in the present case, we observe that the Ld. Principal Commissioner has withheld release of 63 pieces of the said machines. Undisputedly, the appellants have already furnished "Provisional Duty Bond" and "Bank Guarantee", by

taking into account the assessable value of the whole consignment, not only of the goods ordered to be released. As the appellants have already executed the Bond and Bank Guarantee as required for the whole consignment, we do not find any valid reason for not releasing the 63 pieces of HSEs in question. Accordingly, we are of the view that 63 pieces of HSEs imported by the appellants are to be provisionally released, subject to fulfilment of the conditions as mentioned in the order passed by the Hon'ble Calcutta High Court, which has been affirmed by the Hon'ble Apex Court.

11. We find that an identical issue came up for consideration before this Tribunal in the case of *Arahant Automation v. Pr. Commissioner of Customs, Port [Final Order No. 76723 of 2025 dated 04.07.2025 in Customs Appeal No. 75879 of 2025]* wherein the same view has been taken by this Bench, by ordering provisional release of the HSEs in question upon execution of P.D. bond and bank guarantee.

12. In view of the above, we order for provisional release of the 63 pieces of HSEs in question imported by the appellants herein, on execution of P.D. Bond and bank guarantee as directed by the Hon'ble High Court on similar imports.

13. The appeal filed by the appellant is disposed of on the above terms.

(Operative part of the order pronounced in open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)