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% 29.08.2008

Present: Mr Rajiv Datta, Sr Advocate with Mr Atul Jha,
Advocate for the Appellant.
Ms Zubeda Begum, Advocate for Respondents No. 1, 2
and 4.
Mr Anjan Chakarborty, Advocate for Respondent No. 3.
Mr Satish Agarwala, Advocate for Respondent No. 5.
Mr Pradeep Kumar Arya, Mr V.K. Chopra and
Mr Kamal Chabra, Advocates for Respondent No. 7.

+ **W.P.(C) No. 4962/2008**

* On 14.08.2008 this Court had passed the following order:-

“ This writ petition is directed against the order dated 08.04.2008 passed by the Commissioner (Excise, Entertainment and Luxury Tax) whereby the prohibition of sale by the petitioner to holders of licence in form DD-10 in Delhi has been continued for a further period of three years i.e., upto 31.03.2011.

The petitioner had consigned medicinal drugs which fall under the description of narcotics drugs. The drug being Fentanyl injections. The consignments was booked thorough Indian Airlines to be carried by them by air. It is an admitted position that the consignment was lost in transit.

The allegation against the petitioner is that the petitioner could not have sent the said consignment by air, but could only have sent the same through road or rail transport or through registered insured post. It is also alleged that the petitioner had mentioned “harmless medicine” in the air consignment note and the said air consignment note also carried the endorsement ‘not restricted’. Consequently, the Commissioner was of the

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view that these were all violations of rule 39 of the Delhi Narcotic Drug Rules, 1985. He was also of the view that conditions 5 (a), (b), (c), (d) of the license issued by the Licensing Authority Maharashtra, Mumbai were also not followed.

During the course of arguments, a question has arisen as to whether the Commissioner (Excise) (Entertainment and Luxury Tax) could have issued the prohibitory order in respect of the said commissionerate. It is also to be noted that the licensing authority at Maharashtra, Mumbai had not cancelled or suspended the license of the petitioner. The learned counsel for the petitioner states that the no such cancellation has resulted despite the fact that the authorities in Delhi had informed the licensing authority in Maharashtra of the aforesaid facts. In this context, it is relevant to know that, as to under which provision of law, the Commissioner (Excise) could have passed the prohibitory order that he did? The learned counsel for the respondent seeks time to take instructions in this regard.

Renotify on 29.08.2008.

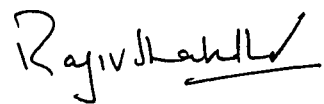
Dasti.”

Subsequent thereto, the learned counsel appearing for the respondents 1, 2 and 3 have filed an additional affidavit in an attempt to show under which provision of law the Commissioner (Excise & Entertainment), Delhi could have passed the impugned prohibitory order in respect of the petitioner (Neon Laboratories Ltd). On going through the affidavit as well as upon hearing the

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learned counsel of respondents 1, 2 and 3, we find that no provision of law has been pointed out to us under which the Commissioner (Excise & Entertainment), Delhi could have prohibited the sales made by the petitioner who is not a resident of Delhi. Consequently, on this ground alone, the impugned order is set aside. The writ petition stands disposed of.


BADAR DURREZ AHMED, J


RAJIV SHAKDHER, J

August 29, 2008
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