

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

11

+

W.P.(C) 5772/2014 & CM No.14217/2014

MICROMAX INFORMATICS LTD

..... Petitioner

Through: Mr. Sunil Dalal with Mr. Rajiv Kumar Chaudhary, Mr. Ramit Rana, and Ms. Bandana, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through Mr. Akshay Makhija, CGSC with Ms. Sanjugeeta Moktan and Mr. Siddharth Thakur, Advocates for R-1 & R-4.

Mr. Satish Kumar, Senior standing counsel for R-2 & R-3.

Mr. Aaditya Vijaj Kumar with Ms. Sumedha Dang and Ms. Anandini Rathore, Advocates for Impleader-ICA.

Mr. Rishad Chowdhury with Mr. Himanshu Bhushan, Advocate for R-5.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE VIBHU BAKHRU

ORDER

17.02.2016

%

1. This writ petition under Article 226 of the Constitution of India has been filed by the Petitioner, Micromax Informatics Limited, to highlight the issue of import of mobile phones with fake/duplicate International Mobile Equipment Identification ('IMEI') numbers. The Petitioner has highlighted the threat to the security of the nation by permitting such imports.

2. It is stated that at the time the petition was filed, there was no specific notification or direction prohibiting the import of such mobiles phones. The Petitioner pointed out that although there were two notifications Nos. 14 of 2009 dated 14th October 2009 and No. 112 of 2009 dated 16th June 2009 prohibiting the import of mobile phones without IMEI numbers or with zeros as the IMEI numbers, neither notification prohibited the import of mobiles phones with fake or duplicate IMEI numbers.

3. On 16th December 2013 an intimation was sent to the Petitioner by the Commissioner of Customs (Import & General), New Custom House, Near IGI Airport, New Delhi stating that 4500 Micromax mobile phones had been imported under Bill of Entry (B/E) dated 12th December 2013 by M/s. Zoon Exim, Ludhiana and that in terms of Rule 5 of the IPR (Imported Goods) Enforcement Rules 2007 read with para 7 of circular No. 41/2007 customs dated 20th October 2007, the Petitioner should furnish consignment specific bond and bank guarantee, failing which the case would be decided on merits without any further reference to the Petitioner. In response thereto, the Petitioner by its letter dated 26th December 2013 informed the Commissioner of Customs that the sample shown to it of the consignments revealed that printed/declared IMEI number of the handsets (which had been illegally/wrongly branded as Micromax X11-XTRA) were duplicates of the IMEIs of the mobile phones that the Petitioner had already imported in April 2013. The Petitioner, therefore, requested the Commissioner of Customs to destroy the consignment illegally/wrongfully imported against the said B/E and initiate necessary action against the illegal import. The Petitioner

requested the Customs Department to carefully screen all possible parallel imports of Micromax branded devices which were not imported by it.

4. A similar letter was written by the Petitioner on 17th January 2014 to the Deputy Commissioner of Customs, Jaipur Airport with regard to the import of mobile phones with fake or duplicate IMEI numbers without any authorization by the Petitioner. Again a request was made to destroy the consignment illegally/wrongfully imported and take necessary action against the importer.

5. In response to the above request, the Deputy Commissioner of Customs, Jaipur wrote to the Petitioner on 23rd January 2014 asking the Petitioner to provide necessary evidence pertaining to the imported goods. On 5th March 2014 the Deputy Commissioner of Customs, Jaipur called upon the Petitioner to execute a bond and bank guarantee under the IPR Rules failing which the goods would not be held for a further period. Another identical letter was issued by the Deputy Commissioner of Customs, Jaipur on 12th/13th March 2014.

6. It is in the above background the Petitioner approached this Court with the present petition seeking a direction to the Respondents to prohibit the import of mobile phones with duplicate or fake IMEI numbers and quash the aforementioned notices dated 5th March and 12th/13th March 2014 and direct the Respondents to destroy such counterfeit mobile phones without requiring the Petitioner to post bonds.

7. By an order dated 2nd September 2014 this Court directed the Respondent

not to release the said subject goods to the importers and recorded the submission of the learned Additional Solicitor General of India that the Respondents would seek instructions.

8. At the hearing on 2nd February 2015 the following order was passed:

“The learned counsel appearing for Union of India (DGFT) has handed over a Notification No. 107 dated 16th January 2015 with regard to amendment in the import policy conditions under ITC (HS) 4 digit code 8517. As per the Notification, an amendment has been brought about whereby the import of mobile handsets (both GSM & CDMA) having duplicate IMEI or fake IMEI numbers has been prohibited in addition to mobile handsets which had no IMEI number or had IMEI numbers with all zeros in 16 digits.

The learned counsel for the Union of India shall, however, in consultation with the Custom Department explain as to how the Custom Authorities will monitor and implement this Notification with regard to duplicate IMEI and fake IMEI numbers. A short affidavit be filed explaining the methodology for implementing the said prohibition. The learned counsel for the Petitioner may also file an affidavit suggesting ways in which the said policy can be implemented.

Renotify on 3rd March 2015.

Interim orders to continue till the next date of hearing.”

9. An affidavit was thereafter filed by the Assistant Commissioner, at Commissionerate of Customs, Jaipur *inter alia* stating that the Director General of Foreign Trade (‘DGFT’) had issued Notification No. 107 dated 16th January 2015 prohibiting import of mobile phones with duplicate IMEI or fake IMEI numbers. The Court was informed that a draft Standard

Operating Procedure ('SOP') had been prepared and was being circulated to the concerned Ministries for their response.

10. At the hearing today, the Court is informed that the Principal Commissioner of Customs (Import), Mumbai has issued a Public Notice No. 23 of 2015 dated 22nd December 2015 setting out the procedure to be followed in terms of the SOP (Ver 1.0) that had been issued by the Department of Telecommunication ('DoT') for implementation of the central government notification prohibiting import of mobile phones with duplicate, fake and non-genuine IMEI. It is further stated that the public notice would be effective from 1st January 2016.

11. Mr. Satish Kumar, learned Senior standing counsel for Respondent Nos. 2 and 3 (the Customs Department) states that the above public notice issued by the Principal Commissioner of Customs (Import), Mumbai was not to the knowledge of the Respondents and therefore, he will seek instructions in that regard.

12. The Court finds that in para 2 of the Public Notice dated 22nd December 2015 a reference has been made to the present writ petition filed before this Court and the prayers made therein. It is obvious that the above Public Notice was issued only pursuant to the orders in the present petition. The Court has no reason to doubt that the procedure set out in the above Public Notice is meant to be followed not only by the Customs Department in Mumbai but elsewhere as well.

13. As pointed out by learned counsel for the Petitioner, with the issuance of

the SOP and the above Public Notice, the main prayer in the present writ petition stands fulfilled. As far as the other prayer concerning the notices dated 5th and 13th March 2014 issued by the Deputy Commissioner of Customs, Jaipur, it is plain that the consignments in question that allegedly contain imported mobile phones with fake/duplicate IMEI numbers will be governed by the SOP and should be processed by following the procedure outlined in the Public Notice dated 22nd December 2015.

14. The writ petition and the application are disposed of in the above terms.

S.MURALIDHAR, J

VIBHU BAKHRU, J

FEBRUARY 17, 2016

Rk