

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.07.2017

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The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition Nos.27269 of 2003

and 22195 of 2004

and

W.P.M.P.Nos.33319 of 2003 and 26884 of 2004

M/s. ITC Ltd.,
rep. by its Constituted Power of Attorney,
Mr. Sambit K. Sathapathy. ...Petitioner in both W.Ps.

Vs.

- 1 Union of India,
rep. by its Secretary,
Department of Revenue, Ministry of Finance,
North Block, Raisina Hill,
New Delhi.
2. The Commissioner of Customs (Sea Port)
Customs House,
No.33, Rajaji Salai,
Chennai - 600 001.
.... Respondents 1 and 2 in both W.Ps.
3. The Asst. Commissioner of Customs (DIU)
Office of Commissioner of Customs (Sea Port)
Docks Intelligence Unit,
Customs House, No.33, Rajaji Salai,
Chennai - 600 001.

...R-3 in W.P.No.27269 of 2003

Prayer in W.P.No.27269 of 2003:

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the respondents to destroy in the presence of the petitioner, 22, 986 cartons of Benson and Hedges Cigarettes with markings 'Made in England' as mentioned in the letter, dated 08.07.2003, of the third respondent or return 22986 cartons of Benson and Hedges Cigarettes to the petitioner for destruction.

Prayer in W.P.No.22195 of 2004:

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the respondents to destroy in the presence of the petitioner, the Cigarettes, bearing brand name, Benson and Hedges, contained in 30 lots and each lot containing 500 cartons @ 10 packets @ 20 units pieces in each, in all 15,000 cartons of Benson and Hedges Cigarettes with markings 'Made in England' warehoused at CCTL, inside Chennai Harbour, as mentioned for sale and in the website of the second respondent, and to pass orders to return the 15000 cartons of Benson and Hedges Cigarettes to the petitioner for destruction.

For Petitioner : Mr. C. Manishankar, Senior Counsel
in both WPs for Mr. K. Krishna Moorthy

For Respondents: Mr. P. Raj Kumar Jabakh
in both WPs Standing Counsel

C O M M O N O R D E R

Heard Mr. C. Manishankar, the learned Senior Counsel for Mr.K.Krishna Moorthy, the learned counsel appearing for the petitioner and Mr. P. Raj Kumar Jabakh, the learned Standing Counsel for the respondents. Since the relief sought for and the parties in these Writ Petitions are one and the same, both the Writ Petitions are taken up together for final disposal.

2. The petitioner, in W.P.No.27269 of 2003, seeks a direction upon the respondents to destroy in their presence 22, 986 cartons of Benson and Hedges Cigarettes with markings 'Made in England' as mentioned in the letter, dated 08.07.2003, of the third respondent or to pass orders, directing the respondents to return the said consignment to the petitioner for destruction. Writ Petition No.22195 of 2004 has been filed, seeking for destruction of 15,000/-cartons of Benson and Hedges Cigarettes and for further similar direction.

3. The petitioner is a Company, incorporated in India, and manufacturer of popular brands of Cigarettes, which bears various Trademarks. The petitioner also entered into an agreement, dated 19.06.1997, with British - American Tobacco (Holdings) Ltd., (BAT), a Company incorporated in England and having its registered Office at United Kingdom. As per the agreement, the petitioner/Company have been granted licence to manufacture and market in the Territory of India, the product, viz., Benson and Hedges Cigarettes (hereinafter, referred to as BHC) for a period of 20 years with option for further renewal. It appears that, the consignments were sought to be imported

through Chennai Port, wrongly described as ''Chinese Toys''. On intelligence being received, the consignments were intercepted, and it was found containing cigarettes, bearing brand name BHC with markings ''Made in England''.

4. When these Writ Petitions were entertained, the Court, after being prima facie satisfied that the petitioner has made out a case, passed interim injunction on 30.09.2003 and 03.08.2004 respectively, restraining the respondents from releasing the goods. The importers of the afore said goods sought for release of the goods, and ultimately, for re-exportation, by filing W.P.No.37709 of 2003, which was disposed of, by order dated 07.09.2007. Since the import was done during the year 2003 and at this juncture, considering the nature of product, the question of examining as to whether the importer is entitled for any indulgence does not arise, and affirming the stand taken by the petitioner in the Writ Petitions, there will be a direction to the respondents to destroy the goods in the manner provided under law, by taking into consideration the circular issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, vide Circular No.9 of 2017, dated 29.03.2017.

5. In the result, the Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petition are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

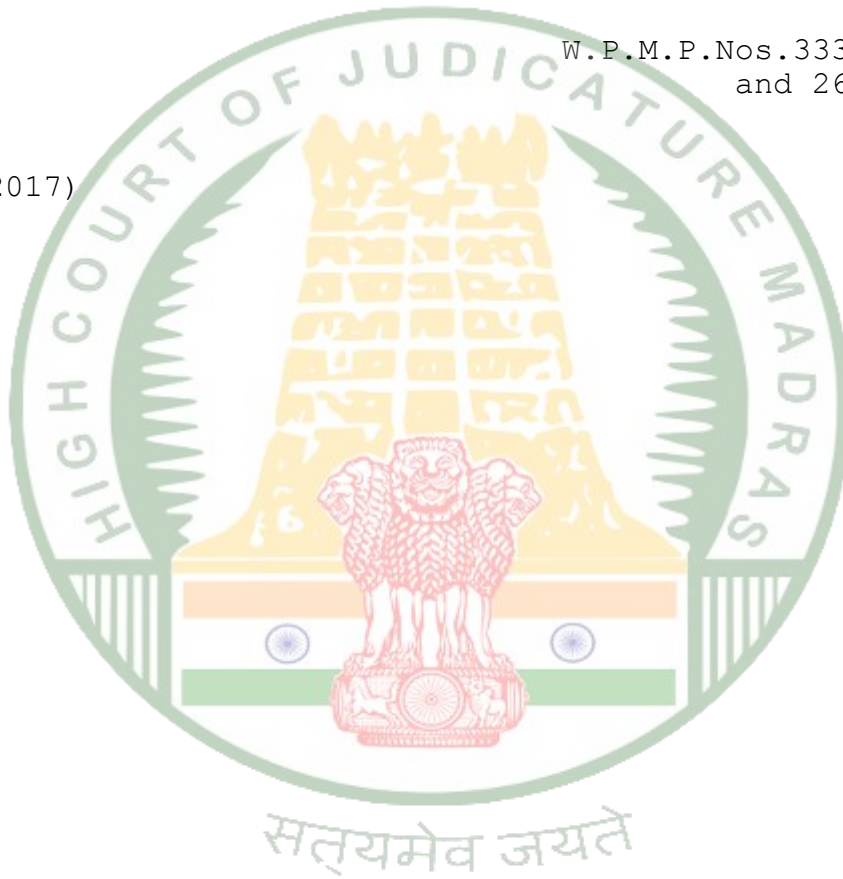
- 1 The Secretary,
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+2cc to Mr.K.Krishnamoorthy, Advocate, S.R.No.52434,52435
+1cc to Mr.P.Rajkumar Jhabakh, Advocate, S.R.No.52345

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SCD(CO)
GN(11/09/2017)



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