$~41 & 42

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 10608/2017, C.M. APPL.43434-43435/2017**

CARGILL INDIA PRIVATE LTD ..... Petitioner

versus

UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 10610/2017, C.M. APPL.43438-43439/2017**

SWISSMARINE CORPORATION LTD & ORS. ..... Petitioners

versus

UNION OF INDIA & ORS. ..... Respondents

Through : Sh. V. Lakshmi Kumaran, Sh. L. Badri Narayanan, Sh. Yogendra Aldak and Sh. Karan Sachdev, Advocates, in Item Nos. 41 and 42.

Sh. Gaurang Kanth, CGSC with Ms. Eshita Baruah, Advocate, for Respondent Nos. 1 and 2 in Item Nos. 41 and 42.

Sh. Amit Bansal and Sh. Akhil Kulshrestha, Advocates, for Respondent Nos. 2 and 3, in Item Nos. 41 and 42.

Sh. Sanjeev Narula, CGSC with Sh. Apar Chopra, Advocate, for UOI, in Item No.42.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

O R D E R

% **29.11.2017**

The petitioners are aggrieved by what they term as erroneous and entirely wrongful interpretation of the Rule 10 of the *Place of Provision of Services Rules, 2012* framed under the *Finance Act, 1994*. They rely upon rule 2(1)(d)(EEC) of the *Service Tax Rules, 1994* and Section 2(26) of the *Customs Act, 1962*, to say that importers made liable to pay service tax in respect of ocean freights is clearly unauthorised and is not subjected to taxation in either the Customs Act, 1962 or the Finance Act, 1994. It is, however, stressed that the valuation rules for the purpose of determining the customs duty includes the ocean freight component upon which duty is levied and paid.

This Court if of the opinion that in the absence of any facts, the determination of the kind sought in these proceedings would be an academic exercise and even amount to an opinion. In these circumstances, the learned counsel for the writ petitioners sought the liberty to withdraw the proceeding and approach the Court in the event of a demand in this regard.

Liberty granted.

The writ petitions are accordingly dismissed as withdrawn along with the pending applications.

S. RAVINDRA BHAT, J

SANJEEV SACHDEVA, J

NOVEMBER 29, 2017/ajk