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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 9511/2018 & CM APPL. 37040-37041/2018

GILLETTE INDIA LIMITED

..... Petitioner

Through

Mr.Ashwani Kumar Mata, Sr. Adv.
with Mr.Madhav Khosla, Ms.Sayesha
Bhattacharya and Mr. Kapil Arora,
Advocates.

versus

UNION OF INDIA & ORS & ORS.

..... Respondents

Through

Mr.Kirtiman Singh, CGSC and
Mr.Rishikant Singh. Mr.Waize Ali
Noor and Mr.Prateek Dhanda,
Advocates for R-1 and R-4.

Mr.Sanjeev Narula, Sr.Standing
Counsel, Mr.Sunil Dalal and
Mr.Abhishek Ghai, Advocates for
Customs/R-3

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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17.09.2018

1. Notice. Mr.Kirtiman Singh, CGSC accepts notice on behalf of respondent nos.1 and 4. Mr.Sanjeev Narula, Advocate for the respondent no.3 accepts notice. Learned counsel states that no counter affidavit is necessary. With the consent of the counsel, petition was heard.

W.P.(C) 9511/2018

Page 1 of 4

2. Petitioner's grievance is with respect to an order of the Commissioner of Customs – dated 26.7.2018, confiscating goods valued at Rs.4,45,80,352/- and also imposing penalty of a like amount. The goods in question, concededly are cosmetics items – various categories of skin shave gel in semi liquid form, classifiable under the appropriate tariff heading under the Customs Tariff Act. These goods are subject to the regulations under the Drugs and Cosmetics Act, 1940 and Rules framed thereunder. Rule 43A/133 regulates and restricts the importation of goods to specified ports. The petitioner company used to import the concerned items at ICD Tughlakabad in the past. It relies upon a No Objection Certificate (NOC) issued by the Assistant Drugs Controller of India, which permitted the importation of goods at ICD Dadri. It also relies upon a communication issued by the Container Corporation of India (CONCOR) dated 16.5.2017 that it would henceforth not book the containers carrying hazardous cargo at ICD Tughlakabad. The importers were advised to land the goods at ICD Dadri.

3. It is contended that the order in original is *per se* excessive because the petitioner was compelled on account of CONCOR's notice. Learned senior counsel for the petitioner also relies upon the NOC issued under the Drugs and Cosmetics Act, 1940 saying that the concerned authorities under the Rules 43A/113 were aware of the ground realities and that consequently the imports could not be termed as contraband or liable for confiscation. It was further submitted that the goods were meant for re-export and that the

re-export with redemption and imposition of penalty to the tune of 100% value is arbitrary. On the other hand, counsel for the Revenue points out that the rule i.e. especially Rule 113 which in turn refers to Rule 43A remains unchanged which means that for the kind of goods which the petitioner sought to import to India, the concerned port i.e. the inland port at ICD Tughlakabad continued to be so. Barring an amendment, this legal position could not have been disturbed by the mere issuance of a NOC or even CONCOR's decision to direct importers of a particular class of goods to land their goods in one of its inland container ports. Apparently, the petitioner had in the past been resorting to imports at ICD Tughlakabad from where its goods were cleared. Although, there seems to be some merit in the argument that it was compelled to import the goods at ICD Dadri on account of CONCOR's decision (for which some kind of generic approval appeared to be forthcoming from the Assistant Drug Controller), nevertheless, it cannot claim ignorance of Rules 43A/113 which continue as it were unamended. Consequently, the decision of the Customs Authorities with respect to the lawfulness of imports at ICD Dadri *per se* cannot be faulted. At the same time, this Court is of the opinion that absolute confiscation without the option of redemption was not justified in the given circumstances, having regard to the previous conduct of the petitioner. Furthermore, the penalty imposed (to the tune of 100%) appears to be excessive. In these circumstances, the impugned order to the extent it confiscates

W.P.(C) 9511/2018

the goods without redemption as also penalty to the tune of 100% value is hereby set aside.

4. The petitioner is at liberty to move the concerned Commissioner of Customs, Noida for appropriate orders to redeem the goods for the purposes of re-export. The Commissioner shall exercise his discretion and shall pass an order after duly considering the writ petitioner's position and impose and indicate reasonable redemption fine and such reasonable penalty, as is warranted. Writ petition is disposed of in the above terms. Pending applications are also disposed of.

Order dasti.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

SEPTEMBER 17, 2018

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