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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3896/2019

NEWTECH MEDICAL DEVICES (THROUGH PROPRIETOR HEMANT
KUMAR SHARMA) Petitioner

Through: Mr.G.K. Sarkar, Ms. Malabika Sarkar,
Mr.Prashant Srivastava and Mr.Deepak
Mahajan, Advocates.

versus

COMMISSIONER OF CUSTOMS (IMPORT) NEW CUSTOMS HOUSE,
NEW DELHI Respondent

Through: Mr.Harpreet Singh, Sr. Standing Counsel
with Ms. Suhani Mathur, Advocate

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✓ W.P.(C) 5934/2019 & CM APP No. 25694/2019

NEWTECH MEDICAL DEVICES (THROUGH PROPRIETOR HEMANT
KUMAR SHARMA) Petitioner

Through: Mr.G.K. Sarkar, Ms. Malabika Sarkar,
Mr.Prashant Srivastava and Mr.Deepak
Mahajan, Advocates.

versus

COMMISSIONER OF CUSTOMS (IMPORT) NEW CUSTOMS HOUSE,
NEW DELHI Respondent

Through: Mr.Harpreet Singh, Sr. Standing Counsel
with Ms. Suhani Mathur, Advocate

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE ASHA MENON

ORDER

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30.05.2019

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1. These are two writ petitions by the same party which has imported 'Stent Crimping Machine' from the USA under the EPCG license for manufacturing drug eluting stent with its parts and accessories. According to the Respondents, clearance of the machine cannot be permitted since the machine is found to be a used, old and refurbished one as per the Chartered Engineer appointed by the Customs Department itself.
2. The first writ petition was filed for having the machine re-examined and verified by another approved Chartered Engineer.
3. During the pendency of the first writ petition, a show cause notice dated 7th May 2019 has been issued to the Petitioner which has been challenged in the second writ petition i.e. W.P(C) 5934/2019.
4. Learned counsel for the Petitioner has drawn the attention of this Court to a circular dated 15th October, 2015 issued by the Central Board of Excise and Customs laying down the procedure to be followed for valuation of importation of second hand machinery. Para 11 of the said circular reads as under:

“11. No Custom House shall require any importer to have an inspection I appraisalment report of second hand machinery from a particular Chartered Engineer. The importer shall be free to select any chartered engineer, empaneled by the Custom House for the respective class of goods, if so required”.
5. In the present case, the admitted position is that the Department has itself

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appointed a Chartered Engineer who has given a report to the effect that the machine imported by the Petitioner is a used/repaired one. Clearly, this is not in consonance with the abovementioned para 11 which permits the importer to select any Chartered Engineer empanelled by the Customs House for such inspection and report.

6. In that view of the matter, the following directions are issued:

- (i) The Petitioner will appear before Dy. Commissioner Customs, Group-5, New Customs House on 3rd June, 2019 at 11 am.
- (ii) The Petitioner will furnish to the said officer the name of the Chartered Engineer selected by the Petitioner from the panel prepared by the Customs House.
- (iii) The report of the Chartered Engineer after inspection of the machine in question will be made available both to the Department as well as to the Petitioner not later than 10th June, 2019.
- (iv) The Petitioner's request thereafter for release of the machine will be considered on its merits and an appropriate order passed on such request by the officer concerned not later than 30th June, 2019.

7. As far as the proceedings in the show cause notice is concerned, it will proceed thereafter in accordance with law.

8. The petitions and the application are disposed of.

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9. Order *dasti* under the signature of the Court Master.

10. The next date fixed in the matter i.e. 18th October, 2019 is cancelled.



S. MURALIDHAR, J.



ASHA MENON, J.

MAY 30, 2019

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