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

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Date of decision: 23.03.2021

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W.P.(C) 3844/2021

RASHI PERIPHERALS PRIVATE LIMITED

..... Petitioner

Through: Ms. Charanya Lakshmikumaran, Mr.
Karan Sachdev and Mr. Agrim Arora,
Advs.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. T.P. Singh, Adv. for R-1.
Mr. Gautam Narayan, Adv. for R-2 to
4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J. (ORAL) :

CM No.11583/2021

1. Allowed, subject to just exceptions.

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2. Issue notice.

2.1 Mr. T.P. Singh accepts service on behalf of respondent no.1/UOI while Mr. Gautam Narayan, accepts service on behalf of respondent nos.2 to 4 (the contesting respondents)

2.2 Mr. Singh and Mr. Narayan say that they do not wish to file counter-affidavit(s) and reply(ies) in view of the order that we propose to pass in the instant writ petition.

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3. The instant writ petition is directed against the prohibition order dated 15.03.2021 passed by respondent no.3.

3.1 A perusal of the order shows that the inspection under Section 67(1) and (2) of the Central Goods and Services Act, 2017 [hereafter referred to as the “Act”] was carried out at the petitioner’s premises located at B/24, Okhla Industrial Area, Phase-II, New Delhi-110020.

4. It is the case of respondent nos. 2 to 4 that the inspection revealed that there was a mismatch between the goods stocked at the aforementioned premises and the details set forth in the stock register.

5. Ms. Charanya Lakshmikumaran, who appears for the petitioner, says that no opportunity was given to reconcile the alleged mismatch. It is also her contention that a statement of the officer employed with the petitioner, present at the premises during the inspection, namely, Mr. Chirag Agarwal, was taken under threat and coercion.

5.1 According to Ms. Lakshmikumaran, the impugned order is a case of overreach for the reason that the petitioner has been prohibited from dealing with its goods stocked in the aforementioned premises which are worth nearly Rs.8.00 crores.

5.2 Ms. Lakshmikumaran says that even if the statement of Mr. Agarwal is taken into consideration, the value of the goods cannot be more than Rs.3.00 crores.

5.3 Ms. Lakshmikumaran also adds that the impugned prohibition order has been passed without the concerned officer forming an opinion that he had reason to believe that the goods were liable for confiscation.

6. On the other hand, Mr. Narayan, submits that the petitioner has not approached respondent nos.2 to 4 with a plea that the purported mismatch, between the physical stock and the stock register, could be reconciled.

6.1 Furthermore, Mr. Narayan says that although Mr. Agarwal retracted his statement as is evident from Annexure-P7 with respect to paragraphs 15, 19, 20 and 22 of the statement made by him on 15.03.2021, he did not retract the averments made in paragraph 14 of the statement. Mr. Narayan says that paragraph 14 of the statement of Mr. Agarwal adverts to the fact that the variation between the physical stock and that which stood recorded in register was worth approximately Rs.3.00 crores.

6.2 Besides this, Mr. Narayan says that the petitioner is entitled in law to approach respondent nos.2 to 4 under the provisions of Section 67(6) of the Act to seek release of the goods, *albeit*, on provisional basis, subject to fulfilment of the conditions contained therein.

7. In rejoinder, Ms. Lakshmikumaran says that the basic ingredient for exercise of power in this case was missing, i.e., there was no formation of opinion by the concerned authority that he had reason to believe that the goods were liable for confiscation.

7.1 Ms. Lakshmikumaran emphasized the fact that it is on account of this missing pre-requisite that the petitioner approached this Court *via* the instant petition under Article 226 of the Constitution.

8. Having examined the record and heard the counsel for the parties, we are of the opinion that this writ petition can be disposed of with the following agreed directions:

- (i) The authorized representative and/or advocate of the petitioner will appear before the concerned officer for the purpose of reconciliation of the alleged variation in the stock on 26.03.2021 at 11.00 A.M.
- (ii) The relevant documents will be carried by the authorized representative and/or advocate of the petitioner. In case the concerned officer requires the petitioner to place further documents before him, the petitioner will render due assistance in that behalf.
- (iii) The concerned officer, after examining the material placed before him, by the authorized representative and/or advocate engaged by the petitioner and after granting him/her a hearing in the matter will pass a speaking order. A copy of the order passed by the concerned officer will be furnished to the authorized representative and/or advocate of the petitioner.
- (iv) In case the order passed is adverse to the interest of the petitioner, it shall have leave to assail the same, albeit, as per law.
- (v) Needless to add, the concerned officer, apart from anything else, will set forth in the order if he is not satisfied with explanation given to him, as to the quantum of the variation in monetary terms. The petitioner will, then, have an option to seek release of the goods if it chooses not to assail the order passed by the concerned officer by securing the revenue to the extent indicated by him.

(vi) The aforesaid exercise will be carried out at the earliest, though not later than 02.04.2021.

9. At this stage, Ms. Lakshmikumaran points out that a letter dated 22.03.2021 was filed with the concerned officer by Mr. Chirag Agarwal whereby he has retracted the entire statement made by him on 15.03.2021.

9.1 A photocopy of the said communication has been shared with the Court.

10. We find that although there is a general statement in paragraph 3 retracting the statement made by him, there is no specific denial *vis-a-vis* paragraph 14 though there is a reference to certain other paragraphs, i.e., 15, 19, 20 and 22. For whatever it is worth, the concerned officer will take this communication into account as well.

10.1 A copy of the said communication will be furnished by Ms. Lakshmikumaran to Mr. Narayan during the course of the day *albeit via* email.

11. The Registry will, for the purpose of good order and record, scan and upload the said communication.

12. Resultantly, the interlocutory application shall stand closed.

RAJIV SHAKDHER, J

TALWANT SINGH, J

MARCH 23, 2021/pmc

[Click here to check corrigendum, if any](#)

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