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W.P.Nos. 29236, 29239, 33087,
33088 & 33170 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.12.2022**

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.Nos. 29236, 29239, 33087, 33088 & 33170 of 2022

W.P.No. 29236 of 2022

M/s. Kawarlal & Co.,
No. 27, Raghunayakulu Street,
Chennai – 600 003

by its proprietor K. Ramlal Jain

... Petitioner

Vs

1. The Deputy Drugs Controller(I)
CDSCO, South Zone, Ministry of Health
& Family Welfare,
Government of India, 2nd Floor, Shastri Bhavan
Annexe
No. 26, Haddows Road, Chennai – 600 006.

2. The Drugs Inspector,
O/o. The Deputy Drugs Controller (I),
CDSCO, South Zone, Ministry of
Health & Family Welfare,
Government of India, 2nd Floor, Shastri Bhavan
Annexe
No. 26, Haddows Road, Chennai – 600 006.

.... Respondents

Prayer in W.P. No. 29236 of 2022: Writ petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Mandamus, to permit the petitioner for destruction of the seized goods by the second respondent, viz., 1489 522 kgs of Trimetazidine Dihydrochloride, in the presence of the respondents/drug officials, the seized goods of which is now kept at the godown of the petitioner at



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M/s. Kawarlal & Co., No. 112, Ground & 1st Floor, GNT Road, Madhavaram, Chennai – 600 060, so as to account for the same with the GST and Income Tax Authorities and also for the purpose of applying and getting refund of tax from the said authorities concerning the local purchase of the above said impugned goods by also considering the petitioner's representation dated 22.10.2022.

Prayer in W.P. No. 29239 of 2022: Writ petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Mandamus, to permit the petitioner for destruction of the seized goods by the second respondent, viz., 125 kgs of Silymarin 70%, in the presence of the respondents/drug officials, the seized goods of which is now kept at the godown of the petitioner at M/s. Kawarlal & Co., No. 112, Ground & 1st Floor, GNT Road, Madhavaram, Chennai – 600 060, so as to account for the same with the GST and Income Tax Authorities and also for the purpose of applying and getting refund of tax from the said authorities concerning the local purchase of the above said impugned goods by also considering the petitioner's representation dated 22.10.2022.

Prayer in W.P. No. 33087 of 2022: Writ petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Mandamus, to permit the petitioner for destruction of the seized goods by the second respondent, viz., 45.900 kgs of Megestrol Acetate, in the presence of the respondents/drug officials, the seized goods of which is now kept at the godown of the petitioner at M/s. Kawarlal & Co., No. 112, Ground & 1st Floor, GNT Road, Madhavaram, Chennai – 600 060, so as to account for the same with the GST and Income Tax Authorities and also for the purpose of applying and getting refund of tax from the said authorities concerning the local purchase of the above said impugned goods by also considering the petitioner's representation dated 22.10.2022.

Prayer in W.P. No. 33088 of 2022: Writ petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Mandamus, to permit the petitioner for destruction of the seized goods by the second respondent, viz., 126.70 kgs of Verapamil Hcl, in the presence of the respondents/drug officials, the seized goods of which is now kept at the godown of the petitioner at M/s. Kawarlal & Co., No. 112, Ground & 1st Floor, GNT Road, Madhavaram, Chennai –



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600 060, so as to account for the same with the GST and Income Tax Authorities and also for the purpose of applying and getting refund of tax from the said authorities concerning the local purchase of the above said impugned goods by also considering the petitioner's representation dated 22.10.2022.

Prayer in W.P. No. 33170 of 2022: Writ petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Mandamus, to permit the petitioner for destruction of the seized goods by the second respondent, viz., 235.40 kgs of Erythromycin Stearate, in the presence of the respondents/drug officials, the seized goods of which is now kept at the godown of the petitioner at M/s. Kawarlal & Co., No. 112, Ground & 1st Floor, GNT Road, Madhavaram, Chennai – 600 060, so as to account for the same with the GST and Income Tax Authorities and also for the purpose of applying and getting refund of tax from the said authorities concerning the local purchase of the above said impugned goods by also considering the petitioner's representation dated 22.10.2022.

For Petitioner : Mr. S. Baskaran
For Respondents : Mr. S. Janarthanan
Special Panel Counsel
for R1 and R2

COMMON ORDER

Common order can be passed in all the writ petitions since arguments were advanced focusing on the same set of facts. The parties are also the same.



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2. The writ petitions have been filed in the nature of mandamus seeking a direction to destroy the goods seized by the second respondent in the presence of the respondents/drug officials. The goods 1489 522 kgs of Trimetazidine Dihydrochloride, 125 kgs of Silymarin 70%, 45.900 kgs of Megestrol Acetate, 126.70 kgs of Verapamil Hcl and 235.40 kgs of Erythromycin Stearate, are now stored at the godown of the petitioner at M/s. Kowarlal & Co., No. 112, Ground & first Floor, GNT Road, Madhavaram, Chennai – 600 060.

3. These products have been purchased by the petitioner for further supply to manufacturers, who would manufacture drugs or any other chemicals. The respondents had seized the products on 19/20 of April 2019.

4. While seizing the products, a Mahazar has been drawn up and the products were retained at the godown of the petitioner at No.112, ground and first floor, GNT Road, Madhavaram, Chennai – 600060. They have been kept at the godown of the petitioner only for storage purposes but effectively the respondents have taken



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control and custody of the goods. The documents relating to such seizure had also been forwarded to the jurisdictional court, namely, the Chief Judicial Magistrate Court, at Thiruvallur. Form-16 has also been submitted to the Chief Judicial Magistrate Court and Mahazars have also been submitted.

5. By submission of Form 16 and Mahazar, the custody of the goods which had been seized have been transferred to be the responsibility of the said Court, namely the Chief Judicial Magistrate Court, at Tiruvallur.

6. After seizure, the respondents appeared to have forwarded samples for testing at CDTL at Kolkata. They have received a report that the goods are of standard quality.

7. It is the grievance of the petitioner herein that the test reports have not been forwarded, which prevented the petitioner from taking any effective steps.

8. The petitioner had occasion to file earlier writ petitions and



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an order had been passed directing the petitioner to forward a representation and to the respondents to dispose of the representation. The respondents had not disposed of the representation.

9. In the meanwhile, since the complaint had been lodged before the Chief Judicial Magistrate Court at Tiruvallur, the petitioner had also approached this Court seeking interference with such criminal proceedings. I am informed that this Court had also granted stay of the criminal proceedings.

10. The petitioner is now caught in a web. He can neither go forward nor can he go backwards. The proceedings before the Chief Judicial Magistrate Court have been stayed by this Court. The goods have been seized. They are under the control of that Court. When the goods were seized, they had been forwarded for testing. The report stated that the goods were of standard quality. Still the petitioner cannot get return of the goods. He cannot even file applications seeking return of the goods as there was a stay of the criminal proceedings. By this time, the goods reached their shelf life.



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11. By way of these writ petitions, the petitioner seeks a direction or permission to destroy the goods which had been seized. He is hopeful that by this destruction, he can lay a claim for refund of the GST paid and seek protection against the income tax officials from any prosecution lodged by them. It is for that reason, the writ petitions have been filed inviting the Court to pass orders in that regard.

12. I am not inclined to pass such orders. The goods are today under the control and custody of the Chief Judicial Magistrate Court, Tiruvallur.

13. The petitioner himself has invited a situation where he has obtained a stay of further proceedings of the criminal case now pending before the learned Chief Judicial Magistrate at Thiruvallur. It is for the petitioner to work out his remedy before the said court, which is the custodian of the goods seized. Whenever this court grants green signal for proceeding further, then the learned Chief Judicial Magistrate can take a considered decision.



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14. This Court in its writ jurisdiction is as an alien to all those proceedings and cannot step in and pass orders either to the benefit of the petitioner or to the disadvantage of the petitioner. The petitioner can only be directed to approach the appropriate court and get necessary orders. This forum cannot be used as a leverage for obtaining any relief. I am not inclined to grant any relief to the petitioner but at the same time I am hopeful that the learned counsel would file necessary application, before the appropriate forum for necessary reliefs. I must also place a word of caution that the Chief Judicial Magistrate may keep in mind the order of stay granted by the High Court before proceeding further with the criminal case pending there.

15. Since a direction is given to approach the appropriate forum, the writ petitions stand disposed of. No costs.

20.12.2022

Index: Yes/no
mrn

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C.V.KARTHIKEYAN, J.

(mrn)

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