



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 09.01.2024

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THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

Rev. Appl.No.164 of 2023

and

W.M.P.Nos.29109 & 29110 of 2023

1. The Deputy Drugs Controller (India),
Central Drug Standard Control Organization, South Zone,
CDSCO Bhavan, No.37, Jothi Venkatachalam Street,
Vepery,
Chennai – 600 007.
2. The Assistant Drugs Controller (India),
CDSCO, Seaport, No.60, Rajaji Salai,
Customs House,
Chennai – 600 001.
3. The Drugs Controller General of India,
CDSCO, FDO Bhawan, Kotla Marg, ITO,
Mandi House,
New Delhi – 110 002.

... Applicants

Vs.

1. M/s.Aadishwar Excipitents Pvt. Ltd.,
No.112A, Truck Terminal CMD, GNT Road,
Madhawaram, Chennai – 600 110.
Represented by its Director Mr.K.Ramlal Jain.
2. The Deputy Commissioner of Customs (Gr.2),
No.60, Rajaji Salai, Customs House,
Chennai – 600 001.

... Respondents



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PRAYER: Revision Petition filed under Order 47 Rule 1 read with Section 114 of Civil Procedure Code, 1908 to review the order dated 12.09.2023 in W.P.No.24963 of 2023 and to allow the review petition filed by the petitioners and dismiss W.P.No.24963 of 2023.

For Applicants : Mr.A.R.L.Sundaresan
Additional Solicitor General of India
Assisted by
A.R.Sakthivel
Senior Panel Counsel
For R1 : Mr.S.Baskaran

ORDER

This review application has been filed seeking to review the order dated 12.09.2023 in W.P.No.24963 of 2023 and to allow the review petitioner filed by the petitioners and dismiss W.P.No.24963 of 2023.

2. The case were already examined by the authorities under the Drugs and Cosmetics Act, 1940 stationed at the customs house and had rejected the request of the petitioner on 31.07.2023 and thereafter, again on 07.08.2023. Instead the petitioner has filed the above writ petition for a Mandamus.



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3. It is further submitted by the learned Additional Solicitor General of India that the questions of subjecting the imported drugs to chemical examination as ordered vide order dated 12.09.2023 has to be reviewed in the light of the Circular dated 13.12.2005 of CDSCO Circular and Public Notice No.6/2016 dated 13.01.2016 issued by the Office of the Commissioner of Customs (NS-V), Jawaharlal Nehru Custom House, Sheva, TAL-URAN, DIST-RAIGAD, Maharastra – 400 707, wherein it has been clearly stated that the question of re-import of drug is not possible.

4. Defending the Impugned Order the learned counsel for the first respondent/writ petitioner submits that the order passed by this court is well reasoned and requires no interference.

5. He further submits that there is no error apparent on face of record and therefore, the order does not fall for any interference.



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6. I have considered the arguments advanced by the learned Additional Solicitor General of India for the petitioner and the learned counsel for the first respondent/writ petitioner in this Review Application.

7. The imports by the petitioner has to comply not only the requirements of the Customs Act, 1962 but also the provisions of the Drugs and Cosmetics Rules, 1945 and the provisions of the Drugs and Cosmetics Act, 1940.

8. Section 20 of the Customs Act, 1962 stipulates that if goods are imported to India after exportation therefrom, such goods shall be liable to duty and subject to all conditions and restrictions, if any, to which goods of the like kind and value are liable or subject on importation thereof. It reads as under:-

“Section 20 – Re-importation of Goods:

If goods are imported into India after exportation therefrom, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof.”



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9. The expression re-import has not been defined in the Act.

However, Section 2(23) defines the expression “import” as follows:-

“2(23) “import”, with its grammatical variations and cognate expressions, means bringing into India from a place outside India.”

10. A reading of the definition of “import” under Section 2(23) of the Customs Act, 1962 and Section 20 of the Customs Act, 1962, makes it clear that whether the petitioner is the manufacturer or the trader as the case may be is not only required to pay Customs Duty at the time of importation of the goods but will also subject to same conditions and restrictions if any, which the goods of like kind and value are liable to be subjected on their importation.

11. Rule 23 of the Drugs and Cosmetic Rules, 1945 makes it clear that an import license either in Form 10 or Form 10-A has to be obtained or import of drugs as specified in Schedule X and those not specified in Schedule X. Rule 23 of the Drugs and Cosmetic Rules, 1945 reads as



under:-
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*“23. **Import licences.** - An import licence in Form 10 shall be required for [import of drugs], excluding those specified in Schedule X, and an import licence in Form 10-A shall be required for the import of drugs specified in Schedule X”*

12. The petitioner in this case is not a manufacturer of the drugs.

The goods in question was apparently manufactured by M/s.SeQuent Scientific Limited, Raigad District, Maharashtra and was exported to a foreign buyer from South Korea who has rejected a part of the consignment which the petitioner wants to import it into the land mass.

13. The admitted provision is that the petitioner does not have a Drug License as is required under Rule 23 of the Drugs and Cosmetic Rules, 1945.

14. Even if the exported goods was to be re-imported by the manufacturer, M/s.SeQuent Scientific Limited, Raigad District, Maharashtra, a Drug License as is contemplated under the Drugs and Cosmetic Rules, 1945 was required.



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15. This aspect was not brought to the knowledge of the Court at the time when the order was passed.

16. In any event even if the goods were subjected to chemical examination as ordered by this Court vide its order dated 12.09.2023, liberty was given to the fourth respondent to independently take a call as to whether the imported drugs (goods were to be cleared) or have to be re-exported.

17. Admittedly in this case the petitioner is not in possession of any imported license as is contemplated under Rule 23 of the Drugs and Cosmetic Rules, 1945.

18. The respondent shall pass appropriate orders as to whether the imported goods are to be re exported or destroyed. It is open for the applicant to make suitable applications before the fourth respondent in the writ petition.



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C.SARAVANAN, J.

19. In view of the above, order passed by this Court on 12.09.2023 in W.P.No.24693 of 2023 is recalled. The review application stands allowed with the above observations and directions. Consequently, writ petition also dismissed. No cost. Consequently, connected miscellaneous petitions are closed.

09.01.2024

Speaking/Non Speaking Order

Index : Yes/No

Internet : Yes/No

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C.SARAVANAN, J.

To

The Deputy Commissioner of Customs (Gr.2),
No.60, Rajaji Salai, Customs House,
Chennai – 600 001.

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