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

+ W.P.(C) 9825/2024 and C.M. APPL. 40338/2024 (Stay)

ZAKIR KHAN

.....Petitioner

Through: Mr. Deepak Gandhi, Mr. Sumit
Kumar Jha, Mr. R. Chaudhary,
Mr. Paras Ahuja, Advs.

Versus

PRINCIPAL COMMISSIONER OF CUSTOMS (IMPORT) &
ANR.Respondents

Through: Mr. Harpreet Singh, SSC with
Ms. Suhani Mathur, Mr. Jatin
Kumar, Mr. Chander Shekhar,
Ms. Surbhi Chauhan, Mr. Sagar
Chauhan, Ms. Rakhi Chauhan,
Mr. Rajneesh Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **23.07.2024**

1. This writ petition had been preferred seeking the following
reliefs:-

“I. issue writ of Mandamus or Certiorari and/or any other appropriate Writ/order/Directions to the Respondents to grant the opportunity to cross-examine the witnesses whose statements are relied upon by the department to establish a case against the petitioner, where such opportunity was provided but their cross examination was suddenly dropped and insisted on filing final defense/reply. 3 reminders dated 03.07.2024 [**Annexure P-5(Colly)**], 05.07.2024 [**Annexure P-6 (Colly)**], and 12.07.2024 [**Annexure P-8 (Colly)**] to the Notice/Communication/order dated 28.06.2024 (**Annexure P-1**), where clarification was sought have not been responded by the adjudicating authority in the adjudication proceedings of the show cause notice FNO.



DRI/DZU/23/ENQ-20/2021 dated 29.11.2022 (**Annexure P-2**);
AND/OR

II. Pass appropriate direction to the Respondent, in the event of the Adjudicating Authority not offering the three witnesses for cross

examination, the statement of these three witnesses may kindly be discarded and the same may not be used/read against the petitioner in the adjudication of the show cause notice bearing no. 09/2022 dated 29.11.2022 in F. No. DRI/DZU/23/Enq-20/2021/3219 in respect of M/s Geonix International Pvt. Ltd. and Others (**Annexure P-2**); AND/OR,

III. Pass any other order as this Hon'ble Court deems fit and proper in the facts and circumstances of the case.”

2. We had taken note of the grievance of the writ petitioner who had drawn our attention to the order of 29 February 2024 in terms of which a right to cross-examine five witnesses had been accorded. It was the contention of the writ petitioner that although the cross examination of two witnesses had been completed, the remaining three witnesses had not been produced.

3. On the basis of instructions which have been provided, Mr. Singh, learned counsel appearing for the respondents, submits that although the cross examination of Shri Gaurav Jain and Shri Arshad Ayub Ali was completed on 23 April and 20 June, 2024 respectively, the remaining three witnesses could not be produced for cross examination since they failed to appear on the scheduled dates.

4. A request is accordingly made for the respondents being afforded an opportunity to produce the remaining three witnesses for cross examination once again. Bearing in mind the aforesaid stand as struck, we grant liberty as prayed for and dispose of the writ petition on the following terms.

5. In case the remaining witnesses appear on the schedule dates, the petitioner shall be extended an opportunity to cross examine those



persons. In case of a failure on the part of the respondents to produce the remaining three witnesses, legal consequences shall ensue. Though needless to state, it is further observed that the proceedings shall be drawn to a close subject to compliance with the aforesaid observations. In case there be a requirement for a fresh date of hearing being designated, the same may be duly considered by the competent authority.

6. We consequently dispose of the writ petition with the aforesaid directions.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 23, 2024/neha