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

\# **CNR No. DLHC010148382025**

\+ W.P.(C) 3542/2025, CM APPL. 77733/2025 & CM APPL. 14728/2026

TECHSYNC .....Petitioner

Through: Mr. Parth Mullick, Adv.

versus

THE SUPERINTENDENT OF CUSTOMS SIIB ACC IMPORTS AND ORS .....Respondents

Through: Mr. Aditya Singla, SSC with Ms. Arya Suresh Nair, Adv.

\# **CNR No. DLHC010769032025**

\+ W.P.(C) 15448/2025

M/S. DEBANJAN IMPEX .....Petitioner

Through: Ms. Priyadarshi Manish and Mr. Kshitiz Kishor Rai, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Abhishek Yadav, SPC with Mr. Vikrant Malwal, GP for R-1

Mr. Aditya Singla, SSC with Ms. Arya Suresh Nair, Adv.

\# **CNR No. DLHC010013712026**

\+ W.P.(C) 736/2026 & CM APPL. 3543/2026

M/S. TECHSYNC .....Petitioner

Through: Mr. Parth Mullick, Adv.

versus

UNION OF INDIA & ORS. .....Respondents

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Through: Mr. Abhishek Yadav, SPC with Mr. Vikrant Malwal, GP for R-1
Mr. Aditya Singla, SSC with Ms. Arya Suresh Nair, Adv.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MS. JUSTICE SHAIL JAIN

O R D E R

% 02.11.2026

1. For the sake of convenience, the facts are taken from W.P.(C) 3542/2025.

2. Learned counsel for the petitioner contends that on 30.10.2025, the following order was passed:

> " 1. This hearing has been done through hybrid mode.
>
> ***I. Factual Background***
>
> 2. The present petitions have been filed, *inter alia*, seeking release of the consignments of imported products, which have been declared by the Petitioners as body massagers, etc., and were seized by the Customs Department *vide panchanamas* dated 24th January, 2025 and 31st January, 2025.
>
> 3. The brief facts of the case are that the Petitioner is stated to be engaged in the import and supply of products claimed to be 'body massagers'. It is stated that the Petitioner had imported two consignments of the said products on 23rd December, 2024 and 31st December, 2024, which were cleared by the Customs Department for home consumption. It is the case of the Petitioner that even at the time of clearance of the said consignments the same were duly examined by the Customs Department, verifying all the aspects, details, features, and end use of the imported products.
>
> 4. It is further stated that the Petitioner had thereafter imported two more consignments with the description of 'Head and Chic Massager' and 'Silicone Therapy Sleeve'

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which were seized by the Customs Department *vide panchanamas* dated 24th January, 2025 and 31st January, 2025, respectively.

5. It is stated that all the above four consignments were declared under the Customs Tariff Heading No. 90191090 which fall under the category of "*Mechano-Therapy Appliances; Massage Apparatus; Psychological Aptitude-Testing Apparatus; Ozone Therapy, Oxygen Therapy, Aerosol Therapy, Artificial Respiration Or Other Therapeutic Respiration Apparatus*".

6. The Petitioner aggrieved by the said seizure of the imported products has preferred these petitions seeking release of the imported products.

7. On 18th September, 2025, these petitions were considered and it was submitted by the ld. SSC for the Customs Department that a Show Cause Notice dated 25th July, 2025 (hereinafter, "*the SCN*") has been issued to the Petitioner and the said proceedings are still pending.

8. The Court had perused the SCN and observed that the main allegation against the Petitioner is that there is misdeclaration of the imported products and that the same are prohibited products in terms of ***Notification No. 01/1964-Customs*** dated 18th January, 1964 (hereinafter "*the 1964 Notification*"). Thus, according to the Customs Department, the products in question are sex toys and are prohibited from import.

9. Ld. Counsel for the Petitioner had, thereafter, objected to the classification of the imported goods as prohibited goods. She had directed the attention of the Court to identical products of M/s. Reckitt Benckiser India Pvt. Ltd. having been permitted to be imported. The relevant document has been annexed as part of the rejoinder.

10. Considering the above submissions, on 18th September, 2025 the Court was of the view that if the stand of the Customs Department is correct, then the embargo has to be applied uniformly and cannot be selectively applied. Accordingly, the Central Board of Indirect Taxes and Customs (hereinafter "*CBIC*") was directed to take a stand

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on the matter in the following terms:-

"*7. Considering the above position, let the Central Board of Indirect Taxes and Customs (hereinafter "CBIC") take a stand on this matter as to whether import of sex toys, such as the ones which are part of the subject imports, would fall under banned or prohibited by the Customs Department. Further, if import of the said products is banned or prohibited, then let the CBIC clarify on what basis the identical products of other companies are being allowed for import.*"

11. Since then, the matter has been adjourned from time to time. However, on the last date *i.e.,* 29th October, 2025, it was directed that if no submissions are made on the next date then the Petitioner's products would be liable to be released.

II. Submissions on behalf of the parties

12. Today, submissions have been made by Mr. Akshay Amritanshu, ld. SSC appearing for the Customs Department. Insofar as the direction to CBIC to take a policy decision is concerned, it is submitted that the CBIC wishes to conduct an inter-ministerial consultation in order to arrive at the policy decision in respect of products similar to the imported products, including sex toys. Thereafter, the same shall be placed before this Court.

13. Further, on the merits of the case, ld. SCC has relied on the SCN issued to the Petitioner and submits that broadly the grounds for continuing the seizure and detention of the imported products are as under:

(i) That the imported products are sex toys which appear to be items of sexual pleasure rather than body massagers. The said products being obscene in nature are prohibited from importing in India in terms of the 1964 Notification and is penalised under Section 294 of the Bharatiya Nyaya Sanhita, 2023 (hereinafter "*BNS, 2023*").

(ii) That the imported products have not been licensed/certified by the Drug Controller General of India (hereinafter "DCGI") which would be required as the

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imported products are claimed by the Petitioner as therapeutic devices.

(iii) That the Petitioner has failed to provide the Extended Producer Responsibility Registration Certificate under the Battery Waste Management Rules, 2022, which is required since certain products were found to be battery operated.

14. At the outset the ld. Counsel for the Petitioner objects to the alleged classification of the imported products as sex toys and submits that the same are body massagers. It is submitted that the imported products cannot be classified as obscene products in terms of the 1964 Notification. In order to buttress this argument she relies on the decision of the Bombay High Court in the case of ***Commr. of Customs v. DOC Brown Industries LLP, 2024 SSC Online Bom 864.***

15. In addition, it is also submitted by the ld. Counsel for the Petitioner that some consignments of the Petitioner's themselves have been released in the past without being seized.

16. In response thereto, ld. SSC for the Customs Department submits that the earlier consignments may have been released on the basis of 'Self-Declaration'. However, that would not mean that upon inspection of the products that are found to be prohibited, they cannot be seized.

17. On a specific query being made by the Court as to whether it is correct that companies such as M/s. Reckitt Benckiser India Pvt. Ltd. have been permitted to import identical products, Mr. Amritanshu, ld. SSC submits that he has not received any instructions to the contrary.

III. Analysis

18. The Court has heard the parties and perused the documents placed on record.

19. The primary objection raised by the Customs Department is that the imported products are sex toys and therefore, are obscene products, import of which is prohibited under the 1964 Notification. The said notification was issued on 18th January, 1964 and the same has been perused by the Court. The relevant portion of the same reads as under:

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"GSR 87- In exercise of the powers conferred by section 11 of the Customs Act, 1962 (52 of 1962) and in suppression of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 41- Cus., dated the 1 st February, 1963, ***the Central Government, being satisfied that it is necessary in the public interest so to do, for the purposes specified in sub-section (2) of that section, hereby prohibits the import of the following goods, namely****:-*

[...]

2. ***any obscene book, pamphlet, paper, drawing, painting, representation, figure or article****;*

[...]"

20. It would also be relevant to consider the provisions of Section 294 of BNS, 2023 which corresponds to Section 292 of the Indian Penal Code, 1860. The said provision reads as under:

"294. Sale, etc., of obscene books, etc.—(1) For the purposes of sub-section (2), ***a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object*****, including display of any content in electronic form** *shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.*

21. The crux of this matter is whether the imported products have been mis-declared by the Petitioner as body massagers and are in fact sex toys, that are prohibited from import under the 1964 Notification on the ground of being obscene products.

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22. This issue in respect of similar products has already been decided by the Bombay High Court in ***DOC Brown Industries (supra),*** where the Commissioner of Customs had seized the said products for being adult sex toys and therefore obscene products under the 1964 Notification**.** The Petitioner therein being aggrieved by the same had appealed before the Appellate Tribunal which had set aside the seizure on the ground that the Commissioner's findings were completely untenable. This decision was appealed before the Bombay High Court by the Customs Department whereby the High Court had examined the 1964 Notification. The relevant findings of the Bombay High Court are extracted hereunder:

"10.At the outset, ***we may observe that the entire basis for the Commissioner to regard the goods in question which are "body massagers" to be adult sex toys appears to be his perception on a reading of Notification No. 1/1964, dated January 18, 1964.*** *As on date, such notification is stated to be valid,* ***although it is almost 60 years old. It is quite possible that in regard to some of its contents, the notification may also have lost its efficacy in the contemporary times****. Be that as it may, as the said notification was the very foundation to trigger the Commissioner's thoughts on the issue that the goods are prohibited goods in passing the order-in-original, we need to note the said notification, which reads thus: [...]*

11. The only relevant portion of the aforesaid notification is the underscored portion being clause (ii), as referred by the Commissioner to label the goods as prohibited. Such clause prohibits import of the goods, namely, any obscene book, pamphlet, paper, drawing, painting, representation, figure or article. ***Necessarily, in our opinion, the different items as set out in clause (ii) are required to be read ejusdem generis. These machines like massagers certainly cannot be compared with the companion items in the said entries which are in the nature of book, pamphlet, paper, drawing, painting, representation, figure or article, etc.***

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12. This apart, we are in complete agreement with the findings as recorded by the Tribunal that ***it was totally unwarranted and in our opinion, perverse for the Commissioner to take recourse to clause (ii) of the said notification to regard the goods in question as prohibited goods, for more than one reason. Firstly, it was clearly the figment of the Commissioner's imagination and/or his personal perception that the goods are prohibited items. This was far from the legal consequence as brought about by the notification that the goods could be so categorized.*** *We may add that such thinking of the Commissioner was beyond anybody's control. The notification also could not have supported such perception of the Commissioner when he regarded the goods as obscene.* ***As rightly observed by the Tribunal, and obviously as body massagers being traded in the domestic market, were not regarded as prohibited items, was certainly a relevant consideration.***

13. Further and most significantly the very foundation of the objection of the Commissioner being on the basis of an imaginary/probable use of the goods, for the purposes as opined by him, raises more complications. ***If the test of mere imagination or ingenuity is to be applied to prohibit clearance of any goods, this would cross all boundaries of the customs officials being governed by law and the rules.*** *In the facts of the present case,* ***the Commissioner (adjudicating officer) has failed to act as a prudent official who would be expected to act reasonably in deciding the issues of clearance of goods in question, which ought to have been strictly in accordance with law. Any perverse application of law would fall foul of the rules of legitimacy and fairness expected from a quasi-judicial authority.*** *Such approach of the Commissioner has been rightly criticized by the Tribunal. I****f what was observed by the Commissioner in the order-in-original is accepted to be the only test, it would amount to accepting personal views of the officer which would be something unknown to law.*** *Such*

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approach is certainly not permissible. We also say this in the context of the opinions which were gathered by the Commissioner. These experts invited by the Department clearly opined that the goods in question were body massagers which could be subjected to other uses. ***Thus, merely because the goods can be subjected to an alternative use, of the nature, as the Commissioner contemplated, this can never be the test to hold that the goods were prohibited, when they otherwise satisfied the test of goods, which could be imported and sold****. Thus, there was no material before the adjudicating officer, to categorize the goods under clause (ii) to be any obscene book, pamphlet, paper, writing, drawing, painting, representation, figure or article, and of objectional description, falling under the notification. Such view of the Commissioner was patently perverse.*

14. In the light of the aforesaid discussion, we are of the clear opinion that no substantial question of law would arise for our consideration as raised on behalf of the Revenue. The Tribunal is correct in its view when it set aside the orders passed by the Commissioner. The appeal is without merit. It is accordingly rejected."

23. Thus, the Bombay High Court has deprecated the practice of replacing objective analysis of the applicable provisions to the imported goods, with subjective opinions of the concerned Customs officials. The High Court has held that the test of imagination or ingenuity cannot be the applicable test as the same would fall foul of the principles of legitimacy and fairness. It is also relevant to note that the Court as also the Appellate Tribunal were conscious of the fact that products similar to those seized by the Customs Department were being sold domestically and there was no prohibition as to its sale, which was a relevant consideration. Thus, by subjecting personal opinions as to the use of the imported products *i.e.,* 'body massagers', and

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declaring the same as obscene products on the mere possibility of the same being used as sex toys, the Commissioner had acted in violation of the law.

24. Insofar as the 1964 Notification is concerned the Bombay High Court was of the view that the terms contained therein would have to be read *ejusdem generis*, and thus, only products in the nature of book, pamphlet, paper, drawing, painting, representation, figure or article, etc, would be prohibited. The products such as 'body massagers' would not fall within the scope of the 1964 Notification.

25. This Court is in agreement with the decision of the Bombay High Court. The question as to whether any product is obscene or not, cannot, obviously, be left at the discretion of the Commissioner of Customs and other individual officials, in the absence of uniform guidelines for consistent practice in this regard.

26. Further, on the issue of obscenity, the Supreme Court in ***Ajay Goswami v. Union of India, (2007) 1 SCC 143*** has considered the jurisprudence on obscenity and considered the various issues involved in the determination of what is obscene. The relevant paragraphs of the same are as under:

"Contemporary society

62.It was also submitted that in order to shield minors and children the State should not forget that the same content might not be offensive to the sensibilities of adult men and women. The incidence of shielding the minors should not be that the adult population is restricted to read and see what is fit for children.

[...]

Test of ordinary man

71. *The test for judging a work should be that of an ordinary man of common sense and prudence and not an "out of the ordinary or hypersensitive man". As Hidayatullah, C.J. remarked in K.A. Abbas [K.A. Abbas v. Union of India, (1970) 2 SCC 780] : (SCC p. 802, para 49)*

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"If the depraved begins to see in these things more than what an average person would, in much the same way, as it is wrongly said, a Frenchman sees a woman's legs in everything, it cannot be helped."
[...]

75. The definition of obscenity differs from culture to culture, between communities within a single culture, and also between individuals within those communities. *Many cultures have produced laws to define what is considered to be obscene, and censorship is often used to try to suppress or control materials that are obscene under these definitions.*

76. *The term obscenity is most often used in a legal context to describe expressions (words, images, actions) that offend the prevalent sexual morality. On the other hand, the Constitution of India guarantees the right to freedom of speech and expression to every citizen. This right will encompass an individual's take on any issue. However, this right is not absolute, if such speech and expression is immensely gross and will badly violate the standards of morality of a society. Therefore, any expression is subject to reasonable restriction. Freedom of expression has contributed much to the development and well-being of our free society."*

27. Further, the Supreme Court in ***Aveek Sarkar v. State of W.B., (2014) 4 SCC 257*** has discussed the law on obscenity and taken a view that the definition of obscenity cannot be based upon personal opinions. The Supreme Court, after analysing the relevant decisions on Section 292 of IPC and the jurisprudence *qua* obscenity, had laid down the '*Community Standard Test*' for determining what constitutes obscenity. As per the Supreme Court outdated perceptions and standards of sensitive persons cannot dictate what constitutes obscenity, instead the contemporary mores and national standards would have to be considered. The

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relevant portion of the said judgement reads as under:

*"**18.**We are, in this case, concerned with a situation of the year 1994,butwe are in 2014 and **while judging as to whether a particular photograph, an article or book is obscene, regard must be had to the contemporary mores and national standards and not the standard of a group of susceptible or sensitive persons.***

[...]

Community standard test

***23.** We are also of the view that Hicklin test, is not the correct test to be applied to determine "what is obscenity". Section 292 of the Penal Code, of course, uses the expression "lascivious and prurient interests" or its effect. Later, it has also been indicated in the said section of the applicability of the effect and the necessity of taking the items as a whole and on that foundation where such items would tend to deprave and corrupt persons who are likely, having regard to all the relevant circumstances, to read, see or hear the matter contained or embodied in it. **We have, therefore, to apply the "community standard test" rather than the "Hicklin test" to determine what is "obscenity".** A bare reading of sub-section (1) of Section 292, makes clear that a picture or article shall be deemed to be obscene*

(i) if it is lascivious;

(ii) it appeals to the prurient interest; and

(iii) it tends to deprave and corrupt persons who are likely to read, see or hear the matter, alleged to be obscene.

Once the matter is found to be obscene, the question may arise as to whether the impugned matter falls within any of the exceptions contained in the section. A picture of a nude/semi-nude woman, as such, cannot per se be called obscene unless it has the tendency to arouse the feeling of or revealing an overt sexual desire. The picture should be suggestive of deprave mind and designed to excite sexual

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passion in persons who are likely to see it, which will depend on the particular posture and the background in which the nude/semi-nude woman is depicted. Only those sex-related materials which have a tendency of "exciting lustful thoughts" can be held to be obscene, ***but the obscenity has to be judged from the point of view of an average person, by applying contemporary community standards."***

28. In view of the above discussion it is clear that it would be necessary for the CBIC and the Customs Department to take a clear and uniform policy decision that would be in line with contemporary times as observed by the Bombay High Court. Such decisions cannot be taken on subjective opinion but on national standards, to ensure that such opinions are not being imposed selectively by the Customs' officials on selected parties.

29. At present the absence of uniformity is evident from the fact that the Customs Department has permitted other companies to import identical products without any objection. In view of the same until and unless there is a policy decision taken by the CBIC as to whether these products have to be prohibited, and if so then in what manner, the consignments of the Petitioner's cannot be seized or detained in a selective manner.

30. However, since in the present case the SCN issued to the Petitioner is pending adjudication, and the detention of the subject imported products in the case of the Petitioner's appears to be arbitrary, this Court is of the opinion that the subject imported products are liable to be provisionally released in terms of Section 110A of the Customs Act, 1962. The said section clearly permits provisional release of goods in the following terms:-

*" **SECTION 110A. Provisional release of goods, documents and things seized pending adjudication**. - Any goods, documents or things seized under section 110, may,* ***pending the order of the adjudicating authority, be released to the owner on taking a bond from him*** *in the*

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proper form with such security and conditions as the adjudicating authority may require."

31. Accordingly, let the subject imported products be provisionally released subject to furnishing a bond from the Petitioner in the appropriate form and manner. Upon the bond being furnished and the applicable customs duty being paid by the Petitioner, the consignments shall be provisionally released to the Petitioner within one week.

32. In the meantime, let Petitioner file a reply to the SCN and participate in the proceedings which shall continue in accordance with law. A proper hearing shall be provided to the Petitioner and a reasoned order shall be passed taking into consideration the discussion hereinabove.

33. All rights and remedies of the parties are left open.

34. Further, let the CBIC proceed with conducting the inter-ministerial consultation in respect of the uniform policy permitting or prohibiting import of products declared as 'body massagers' or sex toys, considering the position discussed hereinabove.

35. Let CBIC place its stand before the Court by the next date of hearing by way of an affidavit.

36. Registry is directed to communicate this order to the OSD (Legal), CBIC through email (Osd-legal@gov.in) for necessary information and compliance. Let Mr. Akshay Amritanshu, ld. Sr. Standing Counsel, also communicate this order to the OSD (Legal), CBIC for necessary information and compliance.

37. List for reporting compliance on 9th December 2025.'

3. The petitioner has filed the reply to the Show Cause Notice but the adjudication has not taken place till date.

4. The prayer is that the respondents be directed to take a time bound decision.

5. In view of the above, the writ petitions are disposed of with the directions to the respondent to adjudicate the show cause notice as

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expeditiously as possible in the facts of the case preferably within 8 weeks of receipt of the certified copy of this order.

6. Needless to say, the petitioner shall be at liberty to avail remedy in accordance with law, if aggrieved of the decision.

AVNEESH JHINGAN, J

SHAIL JAIN, J

NOVEMBER 2, 2026/PT

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