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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 13.01.2025

+ **W.P.(C) 7863/2017**

INTERNATIONAL RESEARCH PARK LABORATORIES
LTDPetitioner

Through: Mr. Ajay Aggarwal, Advocate.

versus

DIRECTORATE GENERAL OF FOREIGN
TRADERespondent

Through: Mr. Subhash Tanwar, CGSC with Mr.
Sandeep Mishra, Ms. Bhavi Garg &
Mr. Naveen, Advocates.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. At the outset, learned Counsel for the Petitioner points out that a typographical error has crept into paragraph 4 of the order dated 13.05.2024 passed by the Coordinate Bench. It is submitted that the date of the show-cause notice has been incorrectly noted. Learned Counsel for the Petitioner seeks to rely upon the document annexed as Annexure P-20 to the present Petition which records the date of show-cause notice as 31.08.1995.

1.1 Accordingly, the paragraph 4 of order dated 13.05.2024 is corrected to read as follows:

“4. Mr. Subhash Tanwar, Central Government Standing Counsel for the respondent stated that in view of the facts as submitted by the petitioner, let the petitioner be asked to submit a representation (reply) in the



department for re-consideration of the imposition of penalty in pursuance of show-cause notice dated 31.08.1995 and thereafter, the respondent shall take appropriate decision as early as possible, preferably, within 06 weeks.”

2. Learned Counsel for the Petitioner submits that in terms of the order dated 13.05.2024, a representation was filed with the Office of the Respondent on 21.06.2024, however, no response has been received till today.

2.1 Learned Counsel for the Respondent, on the other hand, submits that no representation has been received.

2.2 Since a representation has already been filed on 21.06.2024, learned Counsel for the Petitioner is at liberty to provide a copy of the same to learned Counsel for the Respondent electronically during the course of the day under acknowledgment.

3. With the consent of the parties, the matter has been taken up for hearing and final disposal today.

4. The present petition has been filed seeking to set aside the impugned orders dated 14.03.2017 and 28.09.1996. The Petitioner claims of be the 100% export-oriented unit established for export of assorted cosmetics to the Union of Soviet Socialist of Republics (USSR). The Petitioner has received a show-cause-notice under Section 4-L for action under Section 4-I of the Imports and Exports (Control) Act, 1947 [hereinafter referred to as “I&E Act”] and under Clause 10 for action under Clause 8 of the Imports (Control) Order, 1955 [hereinafter referred to as “Import Order”] read with Section 20(2) of the Foreign Trade (Development & Regulation) Act, 1992 [hereinafter referred to as “FTDR Act”] from the office of the Respondent for failing to fulfill the export obligation and to achieve the value addition to



the satisfaction of the Development Commissioner, Noida Export Processing zone, Noida and violation of “*Import & Export Policy in force at that point of time*”.

5. Subsequently, the Respondent in pursuance of the said show-cause notice, by an Order dated 28.09.1996 imposed a fiscal penalty to Rs.50 lacs on the Petitioner and also debarred the Petitioner from importing any goods, receiving import licence, customs clearance permits and allotment of imported goods through STC/MMTC or any other similar agency under Clause 8(1) of the Import Order from the date of issuance of said order upto 31.03.1999. The Petitioner being aggrieved, filed the appeal under Section 4 of the I&E Act read with section 20(2) of the FTDR Act, which was dismissed by order dated 14.03.2017.

6. The learned counsel for the Petitioner during the course of arguments, stated that the import of Rs.1,21,73,788/- was erroneously included and if the Respondent excludes the said import of Rs.1,21,73,788/-, then the Petitioner would have achieved the target of a minimum 20% for the export.

7. The learned Counsel for the Petitioner also seeks to rely upon the order dated 12.08.2022 passed by Customs, Excise & Service Tax Appellate Tribunal, Mumbai [hereinafter referred to as “CESTAT”], more specifically on paragraphs 21 and 46 therein, by which the demand for customs duty was quashed by the CESTAT Tribunal. It is submitted that the matter has attained finality. The relevant extract of order of the CESTAT is below:

“21... ii) On scrutiny of the photocopies received from the Development Commissioner it can be seen that the import of consumables valued at Rs.1,21,73,788/- form part of the invoice no. 5531 dated 1/7/86. The Audit's proposition that the EOU had imported consumables valued at Rs.1,21,73,788/- in addition to imports valued at Rs.5,69,00,000/- on the bill of entry is erroneous. After excluding the value of Rs.1,21,73,788/- the



value addition is above the minimum limit of 20% and therefore the EOU has complied with the conditions described.

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46. Under the facts and circumstances, we hold that there being no liability to pay duty on import of the goods (for re-export) under the provisions of the Central Excise Act r/w the Customs Tariff Act, the penalty imposed under Rule 173 Q (1) of Central Excise Rules is bad and accordingly we set aside the same.”

8. A Coordinate Bench of this Court had examined the matter briefly on 13.05.2024 and had directed the Petitioner to make a representation. As stated above, the representation has not reached the Office of the Respondent.

9. Learned Counsel for the parties jointly submit that the matter can be disposed of giving an opportunity to the Respondent to decide the representation of the Petitioner.

10. Accordingly, and with the consent of the parties, the present Petition is disposed of, with the following directions:

(i) The Petitioner and/or his authorized representative will appear for hearing with a copy of his representation before Mr. Pradyumna Sahu, Deputy Director General of Foreign Trade, PC-VI Division, Ministry of Commerce and Industry on 21.01.2025 at 3:30 PM;

(ii) The Petitioner is permitted to produce any additional facts or documents in support of his contentions, at the time of the hearing before the concerned Authority.

(iii) In the event, if it is deemed necessary, that there is a need for more than one hearing, the Petitioner and Respondent may mutually schedule such additional hearings amongst themselves as well;



(iv) In the event that there is any requirement for filing of additional documents or clarification, the Respondent shall ensure that these are obtained from the Petitioner expeditiously so as not to delay adjudication.

(v) Once the hearing in the matter is concluded, the Respondent shall pass a Speaking Order within a period of 12 weeks from the date of such hearing;

(vi) The Speaking Order shall be communicated to the Petitioner under acknowledged postal service and e-mail.

(vii) The proceedings shall be conducted *de novo* by the Respondent keeping in mind the orders passed by this Court from time to time.

11. It is clarified that in view of the directions passed today, the Impugned Orders dated 14.03.2017 and 28.09.1996 passed by the Respondent are set aside.

12. Needless to add, that in the event the Petitioner is aggrieved with the order passed by the Respondent, he may take appropriate steps in accordance with the law. All rights and contentions of the parties are left open in this regard.

13. The Petition is accordingly disposed of in the foregoing terms.

14. Parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

JANUARY 13, 2025/ ha

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