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

Date of Decision: 16th September, 2025

+ **W.P.(C) 14311/2025 & CM APPL. 58583/2025**

**M /S MUCHIPARA CONSUMERS CO-OPERATIVE STORES LTD
THROUGH ITS PRESIDENT**Petitioner

Through: Mr. S. Sunil, Adv.
versus

UNION OF INDIA & ORS.Respondents
Through: Mr. Harpreet Singh, SSC, CBIC with
Mr. Jai Ahuja & Mr. Sanidhya Sharma,
Advts. for R-2 & 3.

**CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN**

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India, *inter alia*, challenging the order dated 7th July 2025 passed by the Commissioner of Customs (Appeal). The Petitioner further seeks setting aside of refund order dated 30th April 2024 passed by the Assistant Commissioner (Refund), T-3, 1GI Airport, New Delhi, rejecting the claim of the Petitioner for refund of Earnest Money Deposit (hereinafter, 'EMD') deposit of Rs.29,19,144/-.
3. The background of the case is that an e-auction notice was issued by the Customs Department on 25th January 2017 for sale of certain seized/confiscated cigarettes. The Petitioner submitted the EMD to the tune of Rs.29,19,144/- on 7th/ 8th February 2017. Thereafter, the Petitioner is stated to



have made certain requests relating to the nature of the cigarettes including the date of manufacturing, packaging, imports, etc., which were not available on the auction notice. Ld. Counsel for the Petitioner relies upon emails dated 14th March 2017, 17th March 2017 and 24th March 2017 by the Customs Department requesting the Petitioner to deposit the balance amounts.

4. Upon a request made on 27th March 2017 by the Petitioner, the Customs Department informed the Petitioner on 28th March 2017 that the testing report of the cigarettes has been received and has been accepted by the Customs Department.

5. However, on 29th March 2017, the Central Board of Excise and Customs (hereinafter, 'CBECE') issued a circular being **Circular No. 09/17-Customs** by which it was directed that in the case of confiscated cigarettes etc., there would be prohibition for home consumption in domestic market if the products did not comply with the provisions of the Cigarettes and Other Tobacco Products Act, 2003 and the Legal Metrology Act, 2009. The said circular mandated the destruction of the cigarettes. The relevant extract of the said circular is set out below:

"4 Rule 11(1) of the IPR (imported Goods) Enforcement Rules, 2007, provides that where it is found that the goods detained or seized have infringed intellectual property rights, and have been confiscated under section 111 (d) of Customs Act, 1962 and no legal proceedings are pending in relation to such determination, the Deputy/Assistant Commissioner of Customs, as the case may be, shall destroy the goods under official supervision or dispose them outside the normal channels of commerce after obtaining "no objection" or concurrence of the right holder or his authorised representative.

5 In view of the above, the field formations may refer to



the following guidelines while disposing of illicitly imported cigarettes, which are seized/confiscated.

1. The cigarette packets shall have, inter alia, specified health warning to cover 85% of the principal display area of the package, 60% shall cover pictorial warning and 25% shall cover textual health warning, the placement of the warning, the language to be used on the package, every package of cigarette should have name of the product, name and address of the manufacturer or importer or packer, origin of the product (for import), quantity of the product and date of manufacture [Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce. Production, Supply and Distribution Act, 2003 (COTPA 2003) and rules may be referred].

2. Cigarette packets shall have the name and address of the manufacturer or packer or importer and the month and year in which the commodity is manufactured or pre-packed or imported [Legal Metrology (Packaged Commodity) Rules, 2011 refers]

5.1 Such cigarettes should be disposed of by sale to NCCF/Kendriya Bhandar and other Consumer Cooperatives (refer to Circular No 39/2016-Customs, dated 26-8-2016) or bye-auction.”

6. In view of the above circular dated 29th March 2017, the Petitioner sought data relating to date of manufacturing etc of the cigarettes. However, finally the Petitioner wanted to obtain a refund of the amount which was deposited as EMD by it during the auction process.

7. The Customs Department, on the other hand, blamed the Petitioner for having failed to pay the remaining amount as per the bill and forfeited the EMD. At that stage, the Petitioner approached this Court by way of a writ petition



being *W.P.(C) 5041/2022* titled '*M/s Muchipara Consumers Co-operative Stores Ltd. Through Manager v. Additional Commissioner of Customs & Anr.*'. On 28th March 2022, the Court directed as under:

“8. The writ petition is, accordingly, dismissed as withdrawn, with liberty as prayed for. In case, the petitioner approaches the respondent no.1/revenue for relief, respondent no.1/revenue will be at liberty to pass an order as per law, albeit, after hearing the petitioner.”

8. The Petitioner again filed representations before the concerned authorities for personal hearing. However, since no response was elicited, a second writ petition being *W.P.(C) 9301/2023* titled '*M/s Muchipara Consumers Co-operative Stores Ltd. Through Manager v. Additional Commissioner of Customs (Disposal)*' was filed. On 14th July 2023, the Court directed as under:

*“1. The petitioner has approached this Court aggrieved by the fact that despite the order dated 28 March 2022 passed inter partes, there has been non-compliance insofar as the issue of forfeiture of **Earnest Money Deposit** [“EMD”] was concerned.*

2. Ms. Narain, learned counsel appearing for the respondent, on instructions apprises the Court, however, that the petitioner has failed to approach the appropriate authority in the Refunds Branch of the respondent. It is further submitted that in case the petitioner moves a fresh application in respect of the prayers as made before the competent authority, the same shall be duly taken into consideration and disposed of within a period of two weeks therefrom. The statement so made is recorded and accepted.

3. Since nothing would further survive on the petition, it shall accordingly stand disposed of.”

9. Thereafter, on 2nd August 2023, the Petitioner filed a specific refund



application. The same has been decided *vide* order dated 30th April 2024 rejecting the refund claimed by the Petitioner. The operative portion of the said order reads as under:

“8. I have gone through the materials on record and the submissions made by the Authorized representative of M/s Muchipara Consumer Co-operative Stores Ltd.

8.2 I find that as a part of disposal of seized/confiscated cigarettes of foreign origin, an e-auction of cigarettes of foreign origin was put through M/s MSTC Ltd. Accordingly, M/s Muchipara Consumers Co-operative Stores Ltd. 16, Sashi Bhusan dey Street, Kolkata-700012 was accepted by the approval committee being the highest bidder and they remitted an amount of 29,19,444/- (25% amount of the total bid value) on 07.02.2017 vide Demand Drafts bearing Nos 519699 aDd 714224 as per the payment terms of e-auction in favour of Commissioner of Customs, IGI Airport, New Delhi. As per Para 7.5 of General Terms and Conditions of the e-auction, "In case the successful bidder pays the EMD/SD, but fails to pay the balance material value along with the applicable duties and taxes within the due date, then his EMD/SD will be forfeited." In view of this, since the party did not pay the balance amount within five days from the date of issuance of the acceptance letter i.e. 28.03.2017. Hence, the whole deposited amount of Rs. 29,19,444/- was forfeited by the Commissioner of Customs and the same was communicated to the party vide letter dated 23.06.2017 issued by the Joint Commissioner.

Accordingly, I pass the following order:

ORDER

In view of the, above, the claimant has failed to pay the balance material value along with the applicable duties and taxes within the due date. Therefore, I reject the refund filed in the name of the party "M/s Muchipara Consumers Co-operative Stores ltd., 16, Sashi Bhusan dey Street, Kolkata-700012."



10. The said order dated 30th April, 2024 was passed by the Assistant Commissioner (Refund) and was then challenged by the Petitioner before the Commissioner (Appeals). The Commissioner (Appeals), however, *vide* the impugned order dated 7th July 2025, observed as under:

*“3. On examination of the subject appeal application, it has been found that **litigation of forfeiture of EMD Rs. 29,19,444/- with respect to violation of Terms and Conditions of e-auction is subject of contract of sale** which does not fall under the jurisdiction of Commissioner of Customs(Appeal).*

*4. Further, without prejudice to the above, it has also been observed that original forfeiture of the said EMD amounting to Rs.29,19,444/- was ordered by the Commissioner of Customs. Therefore, **subject Refund Order No.05/2024-25 dated 30.04.2024 is deemed to be the order of the Commissioner** and therefore any appeal against the said Refund Order is not covered under Section 128(1) of the Customs Act, 1962.*

***5. In view of the foregoing, your appeal application (in original) is returned herewith as the same does not fall under the jurisdiction of the Commissioner (Appeals). This is issued with the approval of Commissioner of Customs (Appeals), New Delhi.**”*

11. As can be seen from the above order, the Commissioner (Appeals) has taken a view that since the EMD was in respect of an e-auction and is held to be subject of a contract of sale, it does not fall within the jurisdiction of the Commissioner (Appeals). Further, the original forfeiture was also by the Commissioner of Customs and hence, the Commissioner (Appeals) held that he did not have jurisdiction to deal with the matter. The said order dated 7th July, 2025 is under challenge in this writ petition.



12. On behalf of the Petitioner, Mr. Sunil, Id. Counsel submits that the Petitioner has been left with no remedy inasmuch as the Commissioner (Appeals) is refusing to exercise jurisdiction on merits in respect of impugned refund order dated 30th April, 2024. It was due to CBEC's circular *i.e.*, ***Circular No. 09/17-Customs*** itself that there was an impossibility of performance and hence, the EMD could not be forfeited.

13. On behalf of the Customs Department, Mr. Harpreet Singh, Id. SSC submits that the Petitioner did not comply with deposit of the remaining amount in terms of the bill submitted and hence, the EMD has been rightly forfeited.

14. The Court has heard Id. Counsel for the Parties. The forfeiture of the EMD is by the Commissioner of Customs. Irrespective of the said order, the remedy against the order dated 30th April, 2024 passed by the Assistant Commissioner (Refund) cannot be completely foreclosed insofar as the Petitioner is concerned. The position as it stands is that the order cannot be challenged on merits by the Petitioner before the Commissioner (Appeals) for his refusal to exercise jurisdiction. The Commissioner (Appeals) has also observed that the dispute is in the nature of a contractual dispute, hence he does not have jurisdiction.

15. Keeping both these aspects in mind, this Court is of the view that the Petitioner ought to be permitted, in the unique facts of this case, to challenge the refund order dated 30th April 2024 before an appropriate authority. In the opinion of this Court, presuming the order of forfeiture to be an order by the Commissioner itself and the Commissioner (Appeals) having refused to exercise jurisdiction, the Petitioner is permitted to approach the Customs, Excise and Service Tax Appellate Tribunal (hereinafter, '*CESTAT*') challenging the order dated 30th April 2024 as also the impugned order of the



Commissioner (Appeals). The said appeal shall be filed within two weeks. In the said appeal both the orders dated 30th April 2024 and 7th July 2025 shall be annexed and impugned.

16. The CESTAT shall entertain the appeal on merits and shall comprehensively adjudicate the same as to whether the forfeiture of the EMD amount was in accordance with law or not.

17. Parties to appear before the CESTAT on 13th October 2025.

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

19. The present petition is disposed of in the above terms. Pending applications, if any, shall also be disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

SEPTEMBER 16, 2025

kk/ck