
(2008) 06 CAL CK 0019
In the Calcutta High Court
Case No : Writ Petition No. 1015 of 2008

Imperial Fragrances Pvt. Ltd.

APPELLANT

Vs

Commissioner of Cus. (Port)

RESPONDENT

Date of Decision : 20-06-2008

Acts Referred:

Citation : (2010) 260 ELT 415

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : Sudhir Mehta, for the Appellant; A.S. Roy, for the Respondent

Judgement

Soumitra Pal, J.—The Court: In the writ petition the Petitioner has prayed for a direction upon the Commissioner of Customs (Port), Respondent No. 1 to send the samples of both the Patchouli Oil Standard (Natural Essential Oil) and Patchouli Oil Pure-SPX (Natural Essential Oil) for retesting the percentage of Patchouli Alcohol content to the customs Central Research Laboratory at Delhi and at National Test House Kolkata/Delhi at the cost of the Petitioner and for release of the goods of the Petitioner on the basis of declaration made by the Petitioner.

2. It is submitted by the learned advocate appearing on behalf of the Petitioner that the Respondents authorities have withheld the release of the goods and have raised a dispute regarding the valuation on the ground that both the oils are of the same standard and had sent for chemical test. It appears that there is a chemical test. However, the Petitioner is not satisfied with such test and thus, wants to have it retested. Learned advocate for the Respondents submits that the test done was proper.

3. In my view, the authority should have granted permission to the Petitioner for testing the samples of the imported goods for the second time. Needless to say that while a second report may improve the case of the Petitioner, it will not make the existing report non est. If the Petitioner is given opportunity of testing

the samples once again, no prejudice will be caused to the authorities. In this connection my attention has been drawn to the Apex Court decision in Bombay Oil Industries Pvt. Ltd. Vs. Union of India (UOI) and Others, In my view, the authority can be relied on for making an order directing the authority to take steps for retesting the samples of the imported goods.

4. Therefore, having heard the learned advocates for the parties and considering the facts and circumstances of the case, the writ petition is disposed of by directing the Respondent Nos. 1 and 2 to obtain fresh representative samples of the imported articles in question and to send the same to the Customs Central Research Laboratory at New Delhi for retesting. Such samples of both the consignments shall be drawn in presence of representatives of the parties. Costs for the entire process shall be borne by the Petitioner. All the exercises shall be completed within a fortnight from the date of receipt of a copy of this order by the authority. Copy of the test report shall be supplied to the Petitioner at once. Once the report is made available, parties will be free to proceed further in the matter. So far as the oral prayer for release of the goods is concerned, the Petitioner is at liberty to approach the Adjudicating Officer before whom the matter is pending.

5. Since the Respondents were not called upon to file affidavits controverting the allegations in the writ petition, the allegations are deemed not to have been admitted by them.

6. No order as to costs.

7. All parties concerned are to act on a signed copy of the minutes of the operative portion of this order on the usual undertakings.