

CAN 1172 of 2015
in
WP 26950 (W) of 2014
M/s Joybuddy Fun Products Pvt.
Ltd. and another
-versus-
Union of India and others

Mr Sushil Kumar Sewak	... for the petitioners.
Mr M.C. Prusty	
Ms Kanta Ray	... for UOI.
Mr S.B. Saraf	
Mr S.K. Saha	... for the respondent nos.2 & 3.
Mr Bhaskar Prasad Banerjee	... for the Drug Controller Authority.

Sufficient grounds have been made out as to why the petitioners were not represented on February 4, 2015 when WP 26950 (W) of 2014 was dismissed for default.

The order dated February 4, 2015 is recalled and WP 26950 (W) of 2014 is restored to the file.

This restoration application, CAN 1172 of 2015, is allowed as above.

Since the customs authorities are represented, the matter is taken up for immediate consideration. The grievance of the petitioners is that though e-cigarettes are freely available in the domestic market and e-cigarettes have been permitted to be imported at various ports in the country in absence of any law or specific prohibition in such regard, the petitioners' consignment has been wrongfully withheld at the Kolkata Airport. The matter has been waiting for a considerable period and the affidavits initially called for from the customs had not been filed. An order was made on January 6, 2015 for the attention of the Solicitor-General of India to be invited so that an appropriate stand could be taken by the Central Government. A letter dated January 16, 2015 addressed by the Solicitor-General to Advocate for the customs authorities indicates that a clear and definite stand has not been taken by the Union Government in the matter.

It is fairly submitted on behalf of the customs authorities that the customs in Kolkata have no specific instructions as to whether the import of e-cigarettes should be permitted or not. It is also fairly submitted that e-cigarettes have been permitted to be imported and continue to be imported at several other ports in the country.

In their affidavit filed today by the customs authorities, they have appended a chart which reveals the import of e-cigarettes, atomizers and spare-parts even in the month of December, 2014.

The customs authorities here were probably unsure of the matter and did not release the consignment till an opinion was obtained from the Drugs Controller by the consignee. The Drugs Controller has spoken of the ill-effects of e-cigarettes. But the Drugs Controller's opinion is only one factor that the Union Government may consider as a matter of policy as to whether the import of e-cigarettes should be permitted.

Since there is no provision of law which is cited for restraining or prohibiting the import of e-cigarettes into this country and in view of the practice followed elsewhere as accepted by the customs authorities, WP 26950 (W) of 2014 is allowed by setting aside the impugned decision of the customs authorities to withhold the petitioners' consignment of e-cigarettes at the Kolkata Airport. The relevant consignment should be released in accordance with law, upon assessment of duty and the like, within a fortnight from date.

The petitioners will not be liable for a demurrage or other charges for the delayed release of the consignment.

There will be no order as to costs.

Certified website copies of this order, if applied for, be urgently made available to the parties upon compliance with the requisite formalities.

(Sanjib Banerjee, J.)