



\$~70

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

Date of decision: 1st September, 2025

+ **W.P.(C) 12907/2025 & CM APPL. 52724/2025**

MITRAJ BUSINESS PRIVATE LIMITED THROUGH ITS
DIRECTOR MR MANOJ KANKANE

.....Petitioner

Through: Ms. Riya Soni and Mr. Sunil Kumar
Tripathi, Advs.

versus

UNION OF INDIA REPRESENTED BY THE SECRETARY
MINISTRY OF FINANCE & ORS.

.....Respondents

Through: Ms. Anushree Narain, SSC with Mr.
Naman Choula, Adv.

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, a recognised startup under the Micro, Small, and Medium Enterprises (hereinafter, 'MSME') sector, engaged in the business of baby care products under the name 'Fabie Baby'. The Petitioner seeks various reliefs against the Customs Department.
3. The background of the case is that the Petitioner had imported certain packaging materials for baby care products, which were loaded in Dubai and arrived at Mundra Port and further delivered to ICD Tughlakabad.
4. An alert was issued against the said containers and the same were inspected by the Customs officials. A *panchnama* was also prepared as per



which, there were two extra cartons, which were not declared by the Petitioner. According to the Petitioner, immediately, the bill of entry was also agreed to be amended.

5. The Petitioner is stated to have repeatedly visited the Customs Department for release of the containers. However, the same have not yet been released. The containers have been in the warehouse and the Petitioner continues to incur warehousing and container handling charges, apart from the operational loss that is being borne by them. Hence, the prayer for release of containers under the bill of entry No.GSLJEATKD000393 dated 14th June, 2025 along with refund of the demurrage charges and warehousing charges and compensation has been made herein.

6. On 25th August, 2025, notice was issued in this matter and Ms. Anushree Narain, Id. SSC for the Respondent had accepted notice. *Vide* order dated 25th August, 2025, Ms. Narain was directed to seek instructions in the matter. On the last date, *i.e.* 28th August, 2025, the Court was informed that an Order-in-Original has been passed on 22nd August, 2025. The copy of the said order has been handed across today. Let the same be taken on record. The following directions have been passed in the said Order-in-Original:

“ORDER

(1) I, determine the value of the offending goods at Rs. 62,983/-, involving differential duty of Rs. 24,249/-, in respect of the goods imported vide Bill of Entry No. 3232240 dated 12.07.2025, as detailed in Table-B supra, under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, read with Section 14 of the Customs Act, 1962.

(ii) I order confiscation of the offending goods valued at Rs. 62,983/-, as detailed in Table-B supra, imported vide Bill of



Entry No. 3232240 dated 12.07.2025, under Section 111(1) of the Customs Act, 1962. However, I give the importer an option to redeem these goods on payment of a Redemption Fine of Rs. 10,000/- (Rupees Ten Thousand only) under Section 125(1) of the Customs Act, 1962.

(iii) I also impose a penalty of Rs. 5,000/- (Rupees Five Thousand only) upon the importer under Section 112(a)(ii) of the Customs Act, 1962.

(iv) I order re-assessment of the Bill of Entry No. 3232240 dated 12.07.2025 under Section 17(4) of the Customs Act, 1962, so as to give effect to the determined value and the short-payment of duty, in accordance with the findings of this order.”

7. A perusal of the above would show that as per the Order-in-Original, the quantity of goods declared was 80,240 pieces but the actual pieces found on examination of bottle caps and some other products were 1,01,100, i.e., 20,860 excess pieces were found. The same is set out in the Order-in-Original as under:

“8.1 I note that the goods covered under Bill of Entry No. 3232240 dated 12.07.2025 were examined by the officers of SIIB on 24.07.2025, and the proceedings of such examination were duly recorded under Panchnama dated 24.07.2025. On careful perusal of the said examination report and Panchnama, the following discrepancies have been noticed:

(i) On physical examination, the actual weight of the goods was found to be 2060 Kgs as against the declared weight of 1897.7 Kgs, thereby resulting in an excess of 162.3 Kgs over and above the declared weight in the Bill of Entry;

(ii) Certain goods, as detailed below, were found in excess at the time of examination as compared to the quantities declared by the importer in the Bill of Entry

| <i>Sl. No.</i> | <i>Description of Goods</i> | <i>Cartoon</i> | <i>Pcs/ Cartoon</i> | <i>Pcs Declared</i> | <i>Pieces found on examination</i> | <i>Excess Pieces Found</i> |
|----------------|--|----------------|---------------------|---------------------|------------------------------------|----------------------------|
| 2 | HDPE Middle way Cap – For Cosmetics | 8 | 850 | 6800 | 9600 | 2800 |



| | Products | | | | | |
|--------------|--|----|------|--------------|---------------|--------------|
| 3 | Plastic Flip top Cap – For Cosmetics Products | 3 | 2400 | 7200 | 11000 | 3800 |
| 4 | Plastic cap in angular way – For Cosmetics Products | 1 | 1200 | 1200 | 2400 | 1200 |
| 8 | Empty HDPE Plastic 50 Ml Bottle – For Cosmetics Products | 17 | 620 | 10540 | 23600 | 13060 |
| Total | | | | 80240 | 101100 | 20860 |

8. A perusal of the Order-in-Original shows that the authority has proceeded on the basis that there was an under declaration/ misdeclaration of goods which amounts to violation of Section 46(4) of the Customs Act, 1962. Hence, action was contemplated against the Petitioner. In terms of the Order-in-Original, the Petitioner is directed to pay a sum of Rs.24,249/- of differential duty, redemption fine of Rs.10,000/- as also penalty of Rs.5,000/.

9. The Petitioner is run by its Director, Mr. Manoj Kankane who is present in the Court. He submits that he was running a business in Dubai earlier and had moved to India under the 'Make in India' framework and had set up this as a start-up. The Petitioner is a start-up which is recognised as an MSME as also under the 'Start-Up India' initiative.

10. The grievance of the Petitioner, as per the Id. Counsel as also the Petitioner himself, is that the Customs Department had on 24th July, 2025 itself decided to impose basic customs duty at 20% which was accepted by the Petitioner. However, despite this, the Order-in-Original was not passed till 26th August, 2025.

11. Further, the grievance of the Petitioner is that for goods worth approximately Rs. 4,00,000/-, the Petitioner has been made to incur demurrage charges of Rs.3,88,000/-. It is submitted by the Id. Counsel for the Petitioner that the Petitioner was repeatedly made to visit the office of



Customs Department. The details of the same as also the timeline of the events are as under:

- i. 24th July, 2025: The examination of the goods were done.
- ii. 28th July, 2025: The Petitioner was called to ICD Tughlakabad and was informed about the discrepancy in the quantity of goods.
- iii. 29th July, 2025: Summons were issued to the Petitioner. Petitioner was further called upon to record his statement under Section 108 of the Customs Act, 1962.
- iv. 30th July, 2025: The Petitioner had accepted the discrepancies and had agreed to pay applicable duty as also the penalty.
- v. 1st August, 2025: Seizure memo was issued to the Petitioner and he was repeatedly assured that the Order-in-Original would be passed immediately.
- vi. 7th August, 2025: Permission of warehousing was granted by the Respondent.
- vii. 10th August, 2025: The container was moved to the warehouse *i.e.* CMA CGM Logistics Part, Dadri Pvt. Ltd.
- viii. 11th August, 2025: Destuffing of the container took place. In effect, the container delivery took place on 12th August, 2025.

The present writ petition was thereafter filed as the goods were still not released. Finally, the Order-in-Original has been passed.

12. The grievance and difficulty expressed by the Petitioner seems genuine. While there can be no doubt that there has to be truthful declaration in the bills of entry, however, all misdeclarations cannot be treated similarly. The nature of the goods and the extent of the under declaration or misdeclaration cannot be lost sight of. The goods in this case were caps for cosmetic products



as also the bottles for filling cosmetics. These are not goods which are damaging or prohibited in any manner.

13. The submissions made by the Petitioner also reveal a concerning situation where an allegation has been made that the officials of the Customs Department were not at all cooperative with the Petitioner.

14. As per the Customs Department, the Petitioner had failed to present the goods for examination promptly. Moreover, according to the Customs Department the bill of entry was incorrect and inconsistent with the invoice and packing list. The complete documents were also not uploaded and upon physical examination it was noticed that there was under declaration of goods.

15. The Order-in-Original itself recognises the fact that the Petitioner had agreed for the classification which was given by the Customs Department on 30th July, 2025. Despite that, after being aware of the amount of demurrage that is paid by small importers, there was no reason for the Customs Department to delay in passing of the Order-in-Original by almost a month.

16. Considering the prevailing policy in India to encourage start-ups and MSMEs, the Customs Department also needs to be sensitized to ensure that such parties are given some consideration, especially, when the goods are not prohibited goods. In this case, as reflected in the portal itself, on 24th July, 2025, the Petitioner had accepted the proposed classification of the Customs Department. Thereafter, it has taken the Customs Department almost one month to pass the Order-in-Original. The delay is completely inexplicable.

17. Under these circumstances, it is directed that the goods of the Petitioner be released upon payment of differential duty in terms of the Order-in-Original. The redemption fine as also the penalty shall not be liable to be paid by the Petitioner at this stage. However, the Petitioner would be required to



pay the differential duty to the sum of Rs.24,249/-. Upon the said payment being made, the goods of the Petitioner shall be released by the Customs Department within 24 hours.

18. It is a matter of public knowledge that in the case of Start-ups and MSMEs in various areas of executive administration, they are given some preferential treatment so that their businesses are encouraged. Some such examples are:

- In terms of the Master Directions - Reserve Bank of India (Priority Sector Lending – Targets and Classification) Directions, 2025 dated March 24, 2025, all bank loans to MSMEs shall qualify for classification under priority sector lending.
- MSMEs are afforded preferential treatment while granting trademarks and patents. MSMEs can file Form TM-M to request fast-track examination after submitting their application, while for patents, they must file Form 18A for expedited examination. Substantial fee reductions for small entities and start-ups are also afforded which help lower the financial burden associated with patent filing and prosecution.
- **Micro & Small Enterprises Cluster Development Programme(MSE-CDP) Scheme:** This scheme is aimed at Creation of Common Facility Centers including Plug and Play Facilities. This scheme also supports Infrastructure Development Projects including Flatted Factory Complexes.
- **International Cooperation (IC) Scheme:** The scheme aims to build Capacity of MSMEs for entering export market by facilitating their participation in international exhibitions/ fairs/conferences/ seminar/



buyer-seller meets abroad as well as providing them with actionable market-intelligence and reimbursement of various costs involved in export of goods and services. The Scheme provides opportunities to MSMEs to continuously update themselves to meet the challenges emerging out of changes in technology, changes in demand, emergence of new markets, etc.

- **Self Reliant India (SRI) Fund Empowering MSMEs for Aatmanirbhar Bharat:** Under this scheme, the Fund structure is designed in a manner that it will leverage the strength of the private sector in providing growth capital to viable MSMEs having a definite growth plan.

19. At this stage, the Court has put a specific query to Ms. Anushree Narain, Id. SSC as to whether there is any timeline in such cases for release of goods. It is submitted by Id. Counsel that the timeline is that there are three or four different steps that could be taken by the importer, namely, prayer for warehousing and prayer for provisional release. Id. SSC further submits that apart from these, the timelines are provided under Section 110 of the Customs Act, 1962.

20. A perusal of Section 110 of the Customs Act, 1962 would show that the timelines prescribed in the said provision are six months plus an additional six months. The said timeline would be too long in cases involving small businesses, especially, when there are no prohibited goods which are involved.

21. Accordingly, the Central Board of Indirect Taxes and Customs (hereinafter, 'CBIC') as also Commissioner of Customs shall take a look at this matter and consider whether some preferential treatment ought to be



given to Start-ups and MSMEs in terms of timelines, warehousing and provisional release in such cases, especially in case of low value consignments.

22. Let a copy of this order be served upon the CBIC at the following e-mail address being, chmn-cbic@gov.in and the Commissioner of Customs at the following e-mail address being, commrtkdimp-cusdel@gov.in by the Registry. Let an affidavit be filed in this regard by the said two authorities by the next date of hearing.

23. Let a counter affidavit be placed on record by the Respondent within two weeks.

24. Insofar as the redemption fine, penalty and compensation which is demanded by the Petitioner as also the waiver of demurrage charges is concerned, the same shall be considered after the pleadings are completed in the matter.

25. Order *Dasti*.

26. List on 28th October, 2025.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

SEPTEMBER 1, 2025/kp/ck