



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 957 OF 2026

Glamstone Cosmetics Pvt. Ltd., through its
Director Amit B. Dhanuka

... Petitioner

Versus

1. The Union of India
2. The Intelligence Officer, The Directorate of
Revenue Intelligence,
3. The Deputy Commissioner of Customs
[Import Bond Section]
4. The Assistant Commissioner of Customs
Group – 2 (C-F)

... Respondents

Dr. Sujay Kantawala a/w. Mr. Aditya Talpade, Mr. Pratik Karande, Ms. Diksha Talpade, Ms. Prajwal Padole, Mr. Akash Sable, Ms. Aishwarya Kantawala for the petitioner.

Mr. Jitendra B. Mishra a/w. Ms. Sangeeta Yadav, Mr. Ashutosh Mishra, Mr. Rupesh Dubey for the respondent.

Mr. Shalabh Katiyar, Addl. Director, DRI present.

Ms. Veenu Kavaria, Deputy Director, DRI present.

CORAM

:

G. S. KULKARNI &
AARTI SATHE, JJ.

RESERVED ON

:

4 MARCH 2026

PRONOUNCED ON

:

9 MARCH 2026

JUDGMENT (Per G. S. Kulkarni, J.)

1. This petition under Article 226 of the Constitution of India raises an interesting issue, as to whether the cosmetics in question, subject matter of the Bills of Entry filed by the petitioner for warehousing and alleged not to be meant for home clearance, would suffer an embargo for a re-export and proceedings for confiscation under the provisions of Section 111 of the Customs Act, 1962 (for short “**Customs Act**”).

2. The relevant facts are required to be noted : The petitioner is stated to be

engaged in the import and trading of cosmetics (perfumes, glow and lovely cream, Taft Hairspray, toothpaste, shampoo, conditioner, shower gel, luxury perfumes etc.) and FMCG (Fast Moving Consumer Goods). In the month of November, 2025, the petitioner imported three consignments of cosmetics and FMCG. It filed Warehousing Bills of Entry qua these consignments, in November, 2025.

3. It is the petitioner's case that these goods were never intended to be cleared for home consumption, for the reason that as for home consumption, a regulatory approval was necessary, of the petitioner requiring a Central Drugs Standard Control Organization (CDSCO) license. The petitioner had applied for such license on 5 May, 2025 with the Competent Authority under the Drugs and Cosmetics Act, 1940. Admittedly the petitioner has not been granted the CDSCO licence qua the goods in question. This is also not the case of the petitioner that the goods in question would be intended to be cleared on any prior license obtained by the petitioner.

4. The petitioner has contended that a decision to bring the goods into India from the port of origin, i.e., UAE was to warehouse the goods in India, as the warehousing expenses in UAE were three times more than what was payable in India. Hence it was thought feasible to shift the goods to India and thereafter re-export the same, which would enable the petitioner to earn substantial profits. It is contended that this is a perfectly legitimate and acceptable business practice. The petitioner has contended that filing of Warehousing Bills of Entry itself negates any inference, that the petitioner intended to clear the goods for domestic

consumption. It is stated that the goods upon landing were accordingly shifted to the nominated Container Freight Station (CFS), i.e., New Maersk CFS and thereafter, they were assessed by respondent no. 4.

5. The petitioner contends that the Warehousing Bills of Entry were thus filed only to hold the goods in bond, pending regulatory clearance, which also negated any alleged intent to evade customs duty or misuse the goods. The warehousing scheme exists precisely to enable such lawful holding of goods pending compliance. It is the petitioners case that however the goods came to be seized by respondent no. 2 under a Seizure Memo dated 26 November, 2025 issued under Section 110 of the Customs Act.

6. The petitioner to save the detention and demurrage charges made a specific request to the Deputy Director, Directorate of Revenue Intelligence, Nhava Sheva, Mumbai Zonal Unit to permit the petitioner to move the goods/containers from CFS to a Public bonded warehouse. This request was granted by the said officer on the condition that the goods/containers be kept on hold at the bonded warehouse and under 24X7 CCTV surveillance and not permitted to be removed, parted with or otherwise dealt, in any manner, except with the prior written permission of the Deputy Director, DRI, Mumbai Zonal unit. It is the petitioner's case that the petitioner's Director Mr. Amit Bhagwatiprasad Dhanuka attended the office of respondent no. 2 who recorded his statement, when he informed the concerned officials that the goods were meant for re-export, as the CDSCO license was yet to be received by the

petitioner, hence, there was no other option but to re-export the goods.

7. As the goods were not permitted to be re-exported and kept under seizure, the petitioner made a representation to respondent no. 2 for grant of an NOC for allowing re-export. However, no action was taken on the said representation. It is in these circumstances, the present petition has been filed praying for the following substantive reliefs:

“a) That this Hon’ble Court be pleased to issue a Writ of Certiorari or any other writ, order or direction under the Article 226 of the Constitution of India calling for the records pertaining to the petitioners’ case and after going into the validity and legality thereof, to quash and set aside the impugned seizure memo dated 26.11.2025 (marked and annexed as Exhibit-A) under Section 110 of the Customs Act, 1962 issued by respondent no. 2 – the Directorate of Revenue Intelligence, Nhava Sheva-I, Mumbai Zonal Unit in F.No. DRI/MZU/NS-I/INT-178/ENQ-68/2025.”

8. Dr. Kantawala, learned counsel for the petitioner has made extensive submissions. He submits that the imports in question, which are for re-export was *bona fide*, hence any alleged licensing discrepancy was purely regulatory and would not warrant seizure and confiscation of the goods. It is his submission that the action on the part of the respondents in not permitting re-export of goods is wholly arbitrary, being in the teeth of the provisions of Sections 46, 47, 49, 69 & 111 of the Customs Act. It is also his submission that Section 80 of the Customs Act clearly allows and permits re-export of goods brought into India.

9. Dr. Kantawala submits that in the present case, it was imperative for the respondents to permit re-export of the goods, as the goods were not meant to be cleared for home consumption, in the absence of any license with the petitioner, issued under the Drugs and Cosmetic Act as also considering the shelf life of the

goods, deterioration being imminent. It is submitted that this would result in an irreparable loss to the petitioner. It is also his contention that the petitioner was ready and willing to re-export the goods entirely at its own cost without claiming any benefit.

10. Dr. Kantawala referring to Section 69 of the Customs Act would submit that once the clearance of the goods for home consumption is not sought, the said provision read with warehousing scheme contemplates re-export as a legitimate disposition option. It is submitted that the detention of the goods despite willingness of the petitioner to re-export at the petitioner's cost, causes no prejudice to the Revenue and is wholly arbitrary, illegal and contrary to the provisions of the Customs Act. Dr. Kantawala submits that there was no warrant to seize the goods considering the reasons as recorded in the seizure memo, which *inter alia* record that the goods "might be mis-declared" based on the purported intelligence, as also that the goods were undervalued and that there was a requirement for the goods to be imported only on a valid license from CDSCO stated to be mandatory for import of these goods. Dr. Kantawala would next submit that the entire approach of respondent no. 2 is arbitrary inasmuch as on a totally untenable premise, the Chartered Engineer was called upon by respondent no.2 to submit a valuation report, to conclude that the goods were undervalued. He further submits that it is surprising that the seizure memo also records that the goods were attempted to be smuggled into India merely because there was no license from the CDSCO and more particularly when the same were not to be cleared for home consumption under any Bills of Entry for home consumption, as

the goods were intended to be re-exported. It is also his contention that on a totally untenable premise and on the basis of such valuation as undertaken by the Chartered Engineer, the goods subject matter of three Bills of Entry are being valued at Rs.2,04,95,700/-, Rs.3,78,59,012/- and Rs.4,26,39,507/- respectively totalling to Rs.10,09,94,219/-, being seized under a reasonable belief that they were liable to confiscation under the provisions of Section 111(d), 111(l) and 111(m) of the Customs Act, when the actual valuation of the goods was much lesser as set out in the Bills of Entry presented for warehousing.

11. Insofar as the valuation by the Chartered Engineer is concerned, Dr. Kantawala has submitted that the Chartered Engineer is not a competent expert to value the nature of the goods which are cosmetics and FMCG and more particularly Notice No. 16/2024 dated 23 February, 2024 whereby the Office of the Commissioner of Customs had invited applications for empanelment of Chartered Engineers for examination/valuation of second/old & used machinery/goods etc. in the jurisdiction of Jawaharlal Nehru Custom House. It is his contention that a Chartered Engineer would not have any expertise to undertake a valuation of the goods in question which are cosmetics & FMCG.

12. In supporting the aforesaid submissions, Dr. Kantawala has placed reliance on the decision of the Division Bench of this Court in **Phoenix Overseas P. Ltd. vs Union of India**¹ and the decision of Supreme Court in **Garden Silk Mills Ltd. vs. Union of India**².

1 2003(162) E.L.T. 25(Bom.)

2 1999 (113) E.L.T. 358 (SC)

Respondent's case

13. On the other hand, on behalf of respondents, reply affidavit of Mr. Sameer Patil, Deputy Director of the Directorate of Revenue Intelligence, Nhava Sheva-I, Mumbai Zonal Unit dated 26 February, 2026 is placed on record to oppose the petition. The affidavit has wholly supported the impugned seizure memo. It is stated that the Directorate of Revenue Intelligence (DRI) is functioning under the Ministry of Finance, Department of Revenue and is *inter alia* concerned with preventing smuggling of various contraband. It is contended that the officers of DRI are Customs Officers who are working under the ambit of the Customs Act, which is a special and complete code, having the object of detection and prevention of the smuggling of goods are tasked with safeguarding and recovery of customs duties and the government revenue.

14. Insofar as the petitioner is concerned, it is stated that the petitioner has obtained an Import Export Code (IEC) No. AALCF8518K on 18 March, 2025 from the Directorate General of Foreign Trade (DGFT). It is next stated that the DRI, Mumbai Zonal Unit is investigating cases pertaining to import of mis-declared and restricted/prohibited goods including misuse of warehousing provisions under Section 59 of the Customs Act. It is stated that investigations revealed that the petitioner had knowingly and deliberately filed warehouse Bills of Entry after having knowledge that the goods belonging to the same supplier shipped through the same shipper, imported into India by another IEC holder/Importer were kept on hold by the DRI, being similar goods which were

seized and are under investigation. It is stated that in the present case, warehousing Bills of Entry were filed as an afterthought to circumvent the mandatory regulatory compliances on the permissible imports as envisaged under the Customs Act and Foreign Trade Policy, 2023. It is contended that the actions of the petitioner were clearly to circumvent the mandatory compliances as required under the Drugs and Cosmetics Act, 1940 and Cosmetics Rules 2020 whereunder, no import of cosmetics was allowed without prior CDSCO licence. In such context, reference is made to the provisions of Section 2 of the Customs Act and more particularly to the definition of “assessment” [Section 2(2)], “import” [Section 2(23)]; “importer” [Section 2(26)]; “imported goods” [Section 2(25)], and the definition of “India” [Section 2(27)]. Also reliance is placed on the provisions of Section 46(1), 46(4A)(c) of the Customs Act and the provisions of the Foreign Trade Policy, 2023 to contend that there is no distinction between home consumption Bills of Entry and Warehouse Bills of Entry filed under Section 46 of the Customs Act. It is contended that the warehouse Bills of Entry are required to be self assessed by the importer under Section 17 of the Customs Act, and are akin to the Bills of Entry for home consumption. It is next contended that considering the fact that the petitioner did not possess the CDSCO licence, the goods were prohibited goods as per Section 2(33) of the Customs Act. The relevant extracts of the reply affidavit are required to be noted, which reads thus:

“11. Further, attention is invited to Para 2.36 of the Foreign Trade Policy, 2023 which reads as under:-

Private/Public Bonded Warehouses for Imports:-

(a) *Private/Public bonded warehouses may be set up in DTA as per rules, regulations and notifications issued under the Customs Act, 1962. Any person may import goods except prohibited items, arms and ammunition, hazardous waste and chemicals and warehouse them in such bonded warehouses.*

Thus, it stipulates that warehousing of imported goods is subject to compliance with the provisions of the Customs Act, 1962 read with Foreign Trade Policy and other applicable laws, and specifically excludes prohibited goods from being warehoused.

12. From the above, it appears that, there is no distinction between Bill of Entry for Home consumption and Warehouse Bill of Entry filed under Section 46 of the Customs Act, 1962. **Warehouse, Bills of Entry must be self-assessed by the importer under Section 17 read with section 2(2) of the Customs Act 1962, just like the Bill of Entry for Home consumption.** The IEC holder/Importer have to declare and self-assess everything correctly including requirements of various mandatory regulations, value and other aspects. Filing of a Warehouse Bill of Entry does not absolve the importer from compliance with applicable legal and regulatory requirements at the time of importation as specifically mentioned in section 46 (4A) (c) of the Customs Act, 1962. The purpose of The warehousing provisions is limited to deferral of duty payment subject to furnishing of bond under section 59 and does not permit import of prohibited or restricted goods in violation of applicable laws and regulatory requirements, as well as undervalued them.

.....

16. Further, Para 2.36 of the Foreign Trade Policy, 2023 reads as under:-

Private/Public Bonded Warehouses for Imports:-

(a) Private/Public bonded warehouses may be set up in DTA as per rules, regulations and notifications issued under the Customs Act, 1962. Any person may import goods except prohibited items, arms and ammunition, hazardous waste and chemicals and warehouse them in such bonded warehouses.

(b) Such goods may be cleared for home consumption in accordance with provisions of FTP and against Authorisation, wherever required. Customs duty as applicable shall be paid at the time of clearance of such goods.

(c) The clearance of the warehoused goods shall be as per the provisions of the Customs Act, 1962.

It is submitted that, the Foreign Trade Policy categorically denies warehousing of prohibited items. In the instant case, the goods imported by the petitioner are prohibited/restricted goods as they have not been imported in tandem with the provisions of the Foreign Trade Policy, 2023 and thus, violated the same. Further, the goods in the three (03) consignments were mis-declared in terms of value and non-compliance of regulatory requirements of CDSCO registrations. Thus, from the above discussions, it is ample clear that Bill of Entry filed either for Home consumption or for Warehouse purpose, regulatory compliances are mandatory. In the instant case, non-availability of CDSCO licenses for imported goods make them prohibited.

Furthermore, there is also mis-declaration in term of value.

17. It is submitted that, the petitioner had knowingly and deliberately filed the warehouse Bills of Entry after coming to have the knowledge and information that, the goods belonging to the same supplier imported into India by an another IEC holder/Importer was kept on hold by the DRI, which also contained similar goods which were subsequently seized and are under investigation. Thus, the act of the petitioner in the instant case was nothing but a very calculative, scheming and after-thought action, in order to circumvent the mandatory compliances as required under the Cosmetic Rules, 2020 and deviate the investigation.

18. The import of cosmetics into India is strictly restricted inasmuch as, for import of cosmetic products from foreign countries into India, registration certificate from the Central Drugs Standard Control Organization [CDSCO] is mandatory under the Cosmetic Rules, 2020. Thus, without the said registration certificate, the import is in violation and is accordingly prohibited.

19. The petitioner is required to be examined and investigated under the provisions of the Customs Act, 1962 in the present case, on the allegations of having been involved in the illegal import of various brands of cosmetics, perfumes etc. by way of mis-declaration and non-compliances of statutory provisions. They are being investigated for the goods which had been recovered under panchanama dated 12.11.2025, 13/14.11.2025 and 26.11.2025, for their 14/15.11.2025 and seized on role/involvement in the import of the impugned goods.

20. Several opportunities were granted to the petitioner to join the investigation and to participate in the investigation. Summons was also issued to the other director of the petitioner company to make him attend in person and co-operate in the investigation on several occasions. However, instead of joining the investigation, the directors of the petitioner company deliberately avoided the summons on some or other pretext. Initially, they informed that they had given all the documents through email but deliberately and intentionally avoided personal appearance. Till date, neither the directors nor any of the representatives of the petitioner have joined the investigation.

21. The petitioner has sought permission for re-export of the impugned goods.

....

The subject goods are liable for confiscation for mis-declaration of value and non-compliance of regulatory requirements. They cannot be allowed to be re-exported without investigation, issuance of Show Cause Notice and adjudication thereof. These offences cannot be regularized by simply allowing them to re-export when blatant violation of Customs Act, Foreign Trade Policy, Drugs and Cosmetics Rules have already been brought on record. The subject goods falls under the prohibited category and is still under investigation. Further, the petitioner has deliberately avoided to join the investigation inspite of giving numerous opportunities. Furthermore, there have been import clearances effected of similar goods done deliberately from another port, the fact which was hidden from the DRI and not disclosed till date. Hence, it is humbly submitted that the plea of the petitioner should not be entertained and they should be directed to join the investigation forthwith."

(emphasis supplied)

15. Having noted the relevant contents in the reply affidavit filed on behalf of the respondents, a comparison of the value of goods as per the report submitted by the government approved valuer vis-a-vis the valuation declared by the petitioner [IEC holder/Importer] is as under:

Sr. No.	Container No.	Date of Examination	Value declared in BE(Rs.)	Valuation given by the CE (Rs.)
1	FSCU9875276	12.11.2025	59,21,082	2,04,95,700
2	TCNU7647041	13/14.11.25	49,03,208	3,78,59,012
3	MEDU8880688	14/15.11.25	56,30,061	4,26,39,507
		Total	1,64,54,351	10,09,94,219

16. The reply affidavit accordingly contends that the goods in question are grossly undervalued. The petitioner has declared the value only Rs.1,64,54,351/- as against the actual value of Rs.10,09,94,219/- .

17. Insofar as import of cosmetics into India being restricted, the following contentions are raised in the reply affidavit in paragraph 23 :

“23. BRIEF FACTS OF THE CASE:

.....
.....

C) The import of cosmetics into India is restricted under Import Policy inasmuch as, for import of cosmetic products from foreign countries into India, registration certificate from the Central Drugs Standard Control Organization (CDSCO) is mandatory under the Cosmetics Rules, 2020 and without said registration certificate, the import is considered to be in violation of Foreign Trade Policy and is accordingly, prohibited, as per Section 2(33) of the Customs Act, 1962.

D) However, when enquired from the importer, he stated that he had applied for the required license and due to that reason, he had not filed the Bills of Entry for Home Consumption but instead filed a Warehouse Bills of Entry. However, he wasn't able to produce any documents evidencing that they had applied for the CDSCO license. Though, he was contacted telephonically to produce the copy of the pending CDSCO licenses, he had informed that, he

was out of town for attending a marriage ceremony and requested for time. As the goods were grossly undervalued and imported without a valid license from the CDSCO, the same were seized under Section 110 of the Customs Act, 1962, as it was liable for confiscation under Section 111 of the Customs Act, 1962.

E) It is submitted that, the import of branded/unbranded cosmetic products into India, is regulated and requires to be registered with the Central Drugs Standard Control Organization (CDSCO) which is governed by the Directorate General of Health Services, Ministry of Health & Family Welfare, Government of India. As per Gazette Notification G.S.R 426(E) dated 19 May, 2010 (RUD No.7) for amending the Drugs & Cosmetics Rules, 1945 prescribes for registration of import of cosmetics into the country. All cosmetic products that are imported for sale in India need to be registered with the licensing authority as defined under Rule 21 of the Drugs & Cosmetics Rules, 1945. It is restricted under Import Policy inasmuch as, it is mandatory to obtain registration certificate from the Central Drugs Standard Control Organization (CDSCO) under the Cosmetic Rules, 2020. Thus, without the said registration certificate, the import is violative of the provisions of Customs Act, 1962 and Foreign Trade Policy and is accordingly prohibited.

(emphasis supplied)

18. It is next contended by the respondents that the investigation revealed quite peculiar facts and more particularly from the statements of Mr. Amit Dhanuka as recorded under Section 108 of the Customs Act on 2 December, 2025, wherein, he stated that he had gone to Dubai, [U.A.E.] and had got a job in a shop belonging to Sterling Perfumes Industries LLC at Deira, Dubai, U.A.E. He stated that he was looking after the sales in the said shop till the year 2019. He stated that he came back to Kolkata and started a business of selling of mobile accessories at Kolkata. He stated that he started Glamstone Cosmetics Pvt. Ltd. [petitioner] with one Mohammed Hufeza Sheikh, the other Director. The following relevant contents on the statements as made by Mr. Amit Dhanuka as stated in the reply affidavit read thus :

“23 G.(i) Shri Amit Dhanuka, one of the director and the petitioner, who was present during the course of examination in his statement recorded under Section 108 of the Customs Act, 1962 on 02.12.2025, stated *inter alia*, that:-

.....

b) His role in Glamstone Cosmetics Pvt. Ltd. was to look after the sale and purchase of goods viz. marketing; Glamstone Cosmetics Pvt. Ltd. is indulged in trading of cosmetic goods viz. perfume, body cream, lotion, face wash etc.; cosmetics are imported from Dubai, UAE and were to be sold in the local market;

c) Sh. Mohammed Hufeza Sheikh, the other director also looks after sale and purchase of goods, but since the import in Glamstone Cosmetics Pvt. Ltd. was done for the first time, he was only looking after the entire business; he came in contact with Sh. Mohammed Hufeza Sheikh, who used to come to Sterling Perfumes, Dubai for purchasing cosmetics;

d) The orders for import of goods are placed through phone calls and emails, they don't have any purchase orders and IEC of Glamstone Cosmetics Pvt. Ltd. was obtained in the year March, 2025;

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.....

.....

h) He agreed that, he was present at the APM Terminals and Punjab Conware CFS wherein cosmetic goods were found and recovered; CDSCO Registration Certificates in respect of certain imports were available and for the remaining goods, he had applied for the CDSCO Registration Certificates, he submitted list mentioning the description of goods for which CDSCO registration certificate had been applied filed online;

i) On being asked, when he didn't have the CDSCO Registration Certificates, why did he import the cosmetic goods, he stated that he had applied for the CDSCO Registration Certificates on 05th May, 2025 and had anticipated that he will be issued the CDSCO Registration Certificates by the time his import consignment reaches India; on 12th November, 2025, he received an email informing that a query has been raised against his Application No. COS/COS-4/2025/508;

j) The bank account of Glamstone Cosmetics Private Limited is held with IndusInd Bank, and no payments made towards the goods imported by Glamstone Cosmetics Pvt. Ltd., as being an ex-employee, on the goodwill, goods given to him with the condition that, after sale of the goods, the monies to be transferred to the supplier.

(emphasis supplied)

19. There is also a statement recorded of Shri. Roshan Dalvi, Executive (Documentation), Cesta Shipping Pvt. Ltd. as also a statement of Shri. Nasir Hussain, Trade Manager, Aahil Shipping and Logistics Pvt. Ltd.-Navigo India Maritime Pvt. Ltd. (shipping line) who have stated that the Import General Manifest (IGM) was filed by them through their port handling agent namely United Brothers Shipping Pvt. Ltd. A statement of Shri. Suhas Kashinath Palkar,

Senior Executive of United Brother Shipping Services Pvt. Ltd. was also recorded.

20. On the basis of such statements, it is contended in the reply affidavit that Shri. Amit Dhanuka, Director of the petitioner revealed that he was earlier working in a shop at Dubai belonging to the supplier of the goods till the year 2019 and the other Director was visiting the suppliers' shop for purchase of cosmetics. It was revealed that they did not have any purchase orders and this was their first import consignment. He has also stated that CDSCO registration certificates for certain products were available with them and for the rest, they had applied, however, on 12 November 2025 he received an e-mail informing that a query has been raised against his application. Surprisingly, he further stated that he had not made any payment to the supplier in relation to the imports, being an ex-employee, (he had left the job in the year 2019) as on goodwill the goods had been given to him on credit. Also as the CDSCO registration certificate for the goods subject matter of three containers was not received by him, hence, he had filed warehouse bills of entry. He stated that the goods would be cleared for home consumption only after receipt of the CDSCO registration certificate.

21. It is thus stated that from the statements of the shipping line, consignee and the person who had filed the IGM, it was clear that at no point of time it was informed that the consignments were meant to be re-exported. It was hence clear that movement of the consignments to a warehouse, by filing of warehouse bills of entry, was an after-thought, and a process specifically adopted to circumvent the non-compliance of CDSCO registration. Hence after such illegal import an attempt to re-export the consignments gradually was being restarted when the

petitioner knew that their consignments would also be kept on hold for examination and for violation of the Customs Act similar to the consignment of the same supplier which are withheld for non compliances.

22. It is, hence, contended that the petitioner is involved in the illegal import and smuggling of cosmetics, perfumes and other toiletry goods into India, by way of mis-declaration of value and other particulars, in order to circumvent restriction imposed in terms of the import of cosmetics into India under the import policy. As the petitioner was clearly aware that for import of cosmetics products into India under the import policy, licence from CDSCO was mandatory under the Drugs and Cosmetics Act read with Cosmetics Rules, 2020, before importing of such goods into India. Hence, without the said license, the import was in violation of the said Rules read with the foreign trade policy and therefore, prohibited.

23. Insofar as the petitioner's contention on the re-export is concerned, it is contended that the act of the petitioners in the instant case was nothing but calculative, scheming and an after-thought in order to circumvent the mandatory compliances as required under the Drugs and Cosmetics Act and the Cosmetics Rules, 2020, intended to scuttle the investigation. The relevant averments in that regard are required to be noted which read thus:

"29. Petitioner has contended that, the intent was to re-export the goods hence, the seizure is totally illegal and unwarranted. The petitioner had imported the three (03) consignments viz. declaring them as 'assorted Toiletries' for which they have filed warehouse Bills of Entry. **In the instant case, the petitioner had knowingly and deliberately filed the warehouse Bills of Entry after coming to have the knowledge and information that, the goods belonging to the same supplier shipped through**

the same shipper, imported into India by an another IEC holder/Importer was kept on hold by the DRI, which also contained similar goods. The same was subsequently seized as they are liable for confiscation for violation of Customs Act, 1962, Drugs and Cosmetics Rules and Foreign Trade Policy and is under investigation. Thus, the act of the petitioner in the instant case was nothing but a very calculative, scheming and after-thought action, in order to circumvent the mandatory compliances as required under the Cosmetic Rules, 2020 and scuttle the investigation. Further, the petitioner didn't submit any proof of placing any purchase orders nor any anticipated sales order and initially had no intent for re-export. The petitioner deliberately and intentionally avoided to participate in the investigation nor have they at any point of time, appeared before the DRI, for presenting the facts of their case, except at the initial stage. This very much shows the deliberate avoidance attitude of the petitioner of not presenting himself before the DRI officers for investigation.

30. Further, the petitioner has failed to disclose the actual reason behind for clearing these consignments for re-export, when they had imported the goods into India for domestic clearance. The contention of the petitioner that these goods were never meant for Home consumption is incorrect and false. As mentioned above, since another consignment of the same supplier imported into India using the same shipper and adopting similar *modus operandi* was seized under Customs Act, 1962, the petitioner had deliberately and intentionally filed the warehouse Bills of Entry to avoid their consignments from being seized for undervaluation and non-compliance of the mandatory provisions violative of Customs Act, 1962 in particular Section 46 (4A) (c) of the Customs Act, 1962. Further, there is not only non-compliance of regulatory provisions of CDSCO but also mis-declaration in terms of value of the goods in all the three (03) consignments.

31. Further, several opportunities were granted to the petitioner to present his case and participate & co-operate with the investigation. However, instead of appearing other than his initial appearance of recording preliminary statement, deliberately and intentionally went to his residence located at West Bengal and never participated/presented himself before the DRI. Furthermore, nor the petitioner or his another director who is in Mumbai and/or any other representative of the petitioner company have presented themselves for investigation. Thus, the petitioner's submission that the re-export were bonafide and doesn't warrant confiscation doesn't hold.

32. Petitioner has falsely alleged that the valuation report is based on assumptions and presumptions by providing an indicative assessment. The allegations are totally denied. It is submitted that, as far as the valuation of the goods are concerned, the same were obtained from a registered Chartered Engineer/Government Valuer. The Chartered Engineer/Government Valuer on physical inspection and visual verification had given the valuation of the impugned goods stuffed in the containers to the tune of Rs. 10.10 crore [Rupees Ten Crore and Ten Lakh Only]. Accordingly, the said impugned goods were seized under the provisions of Section 110 of the Customs Act, 1962 under the reasonable belief that they are liable for confiscation under Section 111 of the Customs Act, 1962. Thus, the allegation on the part of the petitioner that, seizure is founded primarily on alleged undervaluation is incorrect and false as there are other reasons also which is a matter of investigation. However, the petitioner is deliberately not co-operating in the investigation.”

(emphasis supplied)

24. Mr. Mishra, learned Counsel for the Respondents, referring to the aforesaid case of the respondents in the reply affidavit, has accordingly submitted that the petition would not warrant interference and the same is required to be dismissed.

Analysis and conclusion :

25. We have heard learned Counsel for the parties and with their assistance, we have perused the record.

26. As seen from the aforesaid discussion, we are tasked to decide whether, in the facts and circumstances of the case, having regard to the relevant provisions of the Customs Act, 1962, read with the provisions of the Drugs and Cosmetics Act, 1940 and the Cosmetics Rules, 2020, the petitioner's case for re-export of the goods can be accepted, in the light of the case of the Department that the goods are 'prohibited goods' within the meaning of Section 2(33) of the Customs Act, hence, the impugned seizure deserves to be upheld.

27. In the context of the issue as involved, it is imperative to note the relevant provisions of the Customs Act, which read thus:

"2. Definitions.—In this Act, unless the context otherwise requires,—

.....

(2) **"assessment"** means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to—

(a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;

(b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;

(c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;

(d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;

....

(23) “**import**”, with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

....

(25) “**imported goods**” means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption;

(26) “**importer**” in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner] or any person holding himself out to be the importer;

(27) “**India**” includes the territorial waters of India;

(28) “**Indian Customs Waters**” means the waters extending into the sea up to the limit of Exclusive Economic zone under Section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976), and includes any bay, gulf, harbour, creek or tidal river;

....

(33) “**prohibited goods**” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;”

28. The substantive provisions as referred and relied on behalf of the parties are the provisions of Section 11 of the Customs Act which provide for ‘Power to prohibit importation or exportation of goods.’ Chapter IVA dealing with the provisions for ‘Detection of Illegally Imported Goods And Prevention of the Disposal thereof’, under which Section 11A(a) providing for “illegal import” to *inter alia* mean the import of any goods in contravention of the provisions of the Act or any other law for the time being in force. Section 111 provides for ‘Confiscation of improperly imported goods, etc.’ These provisions along with

other relevant provisions for convenience are required to be noted which read thus:

Section 11. Power to prohibit importation or exportation of goods.

(1) If the Central Government is satisfied that it is necessary so to do for any of the purposes specified in sub-section (2), it may, by notification in the Official Gazette, prohibit either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, the import or export of goods of any specified description.

... ..

11A. Definitions.--In this Chapter, unless the context otherwise requires,--

(a) "**illegal import**" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force;

(b) "**intimated place**" means a place intimated under sub-section (1), sub-section (2) or sub-section (3), as the case may be, of section 11 C;

(c) "**notified date**", in relation to goods of any description, means the date on which the notification in relation to such goods is issued under section 11 B;

(d) "**notified goods**" means goods specified in the notification issued under section 11 B.]

... ..

46. Entry of goods on importation.—(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner:

Provided further that] if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(3) The importer shall present the bill of entry under sub-section (1) before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

Provided that a bill of entry may be presented at any time not exceeding thirty days prior to the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

(4A) The importer who presents a bill of entry shall ensure the following, namely-

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

47. Clearance of goods for home consumption.—

(1) Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption:

Provided that such order may also be made electronically through the customs automated system system on the basis or risk evaluation through appropriate selection criteria:

Provided further that] the Central Government may, by notification in the Official Gazette, permit certain class of importers to make deferred payment of said duty or any charges in such manner as may be provided by rules.

(2) The importer shall pay the import duty—

(a) on the date of presentation of the bill of entry in the case of self assessment; or

(b) within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment; or

(c) in the case of deferred payment under the proviso to sub-section (1), from such due date as may be specified by rules made in this behalf, and if he fails to pay the duty within the time so specified, he shall pay interest on the duty not paid or short-paid till the date of its payment, at such rate, not less than ten per cent. but not exceeding thirty-six per cent. per annum, as may be fixed by the Central Government, by notification in the Official Gazette.

Provided that the Central Government may, by notification in the Official Gazette, specify the class or classes of importers who shall pay such duty

electronically:

Provided further that] where the bill of entry is returned for payment of duty before the commencement of the Customs (Amendment) Act, 1991 (55 of 1991) and the importer has not paid such duty before such commencement, the date of return of such bill of entry to him shall be deemed to be the date of such commencement for the purpose of this section:

Provided also that] if the Board is satisfied that it is necessary in the public interest so to do, it may, by order for reasons to be recorded, waive the whole or part of any interest payable under this section.

... ..

49. Storage of imported goods in warehouse pending clearance or removal.—
Where,—

(a) in the case of any imported goods, whether dutiable or not, entered for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied on the application of the importer that the goods cannot be cleared within a reasonable time;

(b) in the case of any imported dutiable goods, entered for warehousing, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied on the application of the importer that the goods cannot be removed for deposit in a warehouse within a reasonable time, the goods may pending clearance or removal, as the case may be, be permitted to be stored in a public warehouse for a period not exceeding thirty days:

Provided that the provisions of Chapter IX shall not apply to goods permitted to be stored in a public warehouse under this section:

Provided further that the Principal Commissioner of Customs or Commissioner of Customs may extend the period of storage for a further period not exceeding thirty days at a time.

... ..

Section 59. Warehousing bond. The importer of any goods in respect of which a bill of entry for warehousing has been presented under section 46 and assessed to duty under section 17 or section 18 shall execute a bond in a sum equal to thrice the amount of the duty assessed on such goods, binding himself--

(a) to comply with all the provisions of the Act and the rules and regulations made thereunder in respect of such goods;

(b) to pay, on or before the date specified in the notice of demand, all duties and interest payable under sub-section (2) of section 61; and

(c) to pay all penalties and fines incurred for the contravention of the provisions of this Act or the rules or regulations, in respect of such goods.

(2) For the purposes of sub-section (1), the Assistant Commissioner of Customs or Deputy Commissioner of Customs may permit an importer to execute a general bond in such amount as the Assistant Commissioner of Customs or Deputy Commissioner of Customs may approve in respect of the warehousing of goods to be imported by him within a specified period.

(3) The importer shall, in addition to the execution of a bond under sub-section (1) or sub-section (2), furnish such security as may be prescribed.

(4) Any bond executed under this section by an importer in respect of any goods shall continue to be in force notwithstanding the transfer of the goods to

another warehouse.

(5) Where the whole of the goods or any part thereof are transferred to another person, the transferee shall execute a bond in the manner specified in sub-section (1) or sub-section (2) and furnish security as specified under sub-section (3).

69. Clearance of warehoused goods for export.—(1) Any warehoused goods may be exported to a place outside India without payment of import duty if—

(a) a shipping bill or a bill of export or the form as prescribed under section 84 has been presented in respect of such goods;

(b) the export duty, fine and penalties payable in respect of such goods have been paid; and]

(c) an order for clearance of such goods for 9[export] has been made by the proper officer.

Provided that the order referred to in clause (c) may also be made electronically through the customs automated system on the basis or risk evaluation through appropriate selection criteria.

(2) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that warehoused goods of any specified description are likely to be smuggled back into India, it may, by notification in the Official Gazette, direct that such goods shall not be exported to any place outside India without payment of duty or may be allowed to be so exported subject to such restrictions and conditions as may be specified in the notification.

.....

Section 111. Confiscation of improperly imported goods, etc.

The following goods brought from a place outside India shall be liable to confiscation:--

.... ..

d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

... ..

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an ¹[arrival manifest or import manifest] or import report which are not so mentioned;

... ..

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;”

... .. ”

(emphasis supplied)

29. Having noted the provisions of the Customs Act, it is also necessary to refer to the provisions of the Drugs and Cosmetics Act, 1940 which defines the

expressions ‘cosmetic’ under Section 3(aaa) and ‘to import’ under Section 3(g) to mean to bring into India. Chapter III of the Drugs and Cosmetics Act defines ‘Misbranded cosmetics’ under Section 9C; ‘Spurious cosmetics’ under Section 9D, and ‘Prohibition of import of certain drugs or cosmetics’ under Section 10; further Section 10A provides for ‘Power of Central Government to prohibit import of drugs and cosmetics in public interest’; Section 11 provides for ‘Application of law relating to sea customs and powers of Customs officers’. The said provisions are required to be noted which read thus:

“3. Definitions. —In this Act, unless there is anything repugnant in the subject or context, —

... ..

(aaa) **“cosmetic”** means any article intended to be rubbed, poured, sprinkled or or sprayed on, or introduced into, or otherwise applied to, the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and includes any article intended for use as a component of cosmetic ;

.. ..

(g) **“to import”**, with its grammatical variations and cognate expressions means to bring into India;

9C. Misbranded cosmetics.—For the purposes of this Chapter, a cosmetic shall be deemed to be misbranded—

- (a) if it contains a colour which is not prescribed; or
- (b) if it is not labelled in the prescribed manner; or
- (c) if the label or container or anything accompanying the cosmetic bears any statement which is false or misleading in any particular.

9D. Spurious cosmetics.—For the purposes of this Chapter, a cosmetic shall be deemed to be spurious,—

- (a) if it is imported under a name which belongs to another cosmetic; or
- (b) if it is an imitation of, or is a substitute for, another cosmetic or resembles another cosmetic in a manner likely to deceive or bears upon it or upon its label or container the name of another cosmetic, unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other cosmetic; or
- (c) if the label ,or container bears the name of an individual or a company purporting to be the manufacturer of the cosmetic which individual or company is fictitious or does not exist; or
- (d) if it purports to be product of a manufacture of whom it is not truly a product.

10. Prohibition of import of certain drugs or cosmetics.—From such date¹ as may be fixed by the Central Government by notification in the Official Gazette in this behalf, no person shall import—

- (a) any drug or cosmetic which is not of standard quality;
- (b) any misbranded drug or misbranded or spurious cosmetics;
- (bb) any adulterated or spurious; drug;
- (c) any drug or cosmetic for the import of which a licence is prescribed, otherwise than under, in accordance with, such licence;
- (d) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof the true formula or list of active ingredients contained in it together with the quantities thereof;
- (e) any drug which by means of any statement, design or device accompanying it or by any other means, purports or claims to cure or mitigate any such disease or ailment, or to have any such other effect, as may be prescribed;
- (ee) any cosmetic containing any ingredient which may render it unsafe or harmful for use under the directions indicated or recommended;
- (f) any drug or cosmetic the import of which is prohibited by rule made under this Chapter :

Provided that nothing in this section shall apply to the import, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis or for personal use :

Provided further that the Central Government may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the import of any drug or class of drugs not being of standard quality.

10A. Power of Central Government to prohibit import of drugs and cosmetics in public interest.—Without prejudice to any other provision contained in this Chapter, if the Central Government is satisfied that the use of any drug or cosmetic is likely to involve any risk to human beings or animals or that any drug does not have the therapeutic value claimed for it or contains ingredients and in such quantity for which there is no therapeutic justification and that in the public interest it is necessary or expedient so to do then, that Government may, by notification in the Official Gazette, prohibit the import of such drug or cosmetic.

11. Application of law relating to sea customs and powers of Customs officers.

(1) The law for the time being in force relating to sea customs and to goods, the import of which is prohibited by Section 18 of the Sea Customs Act, 1878¹⁰ (18 of 1878) shall, subject to the provisions of section 13 of this Act, apply in respect of drugs and cosmetics the import of which is prohibited under this Chapter and officers of Customs and officers empowered under that Act to perform the duties imposed thereby on a Commissioner of Customs and other officers of Customs, shall have the same powers in respect of such drugs and cosmetics as they have for the time being in respect of such goods as aforesaid.

(2) Without prejudice to the provisions of sub -section (1), the Commissioner of Customs or any officer of the Government authorised by the Central Government in this behalf, may detain any imported package which he suspects to contain any drug or cosmetic the import of which is prohibited under this Chapter and shall forthwith report such detention to the Drugs Controller, India and, if necessary, forward the package or sample of any suspected drug or cosmetic found therein to the Central Drugs Laboratory.”

(emphasis supplied)

30. Under Cosmetics Rules 2020, Chapter III provides for 'Import and Registration.' Rule 12 provides for 'import of cosmetics.' Rule 13 provides for 'grant of import registration certificate.' Rule 14 provides for 'validity of import registration certificate.' Rule 17 provides for 'Import of cosmetics already registered for import'. Rule 18 provides for 'Prohibition of import of certain cosmetic'. Rule 19 provides for 'Documents to be supplied to the Commissioner of Customs'. Rule 20 provides for 'Procedure for import of cosmetics.' These relevant Rules read thus:

"12. Import of cosmetics.—(1) No cosmetic shall be imported into India unless the product has been registered in accordance with these rules by the Central Licensing Authority or by any officer to whom such powers may be delegated under sub-rule (1) of rule 5.

(2) An application for registration of a cosmetic product intended to be imported into India shall be made through the online portal of the Central Government in Form COS- 1 either by the manufacturer himself or by his authorised agent or the importer in India or by the subsidiary in India authorised by the manufacturer.

(3) An authorisation by the manufacturer to his agent in India shall be duly authenticated either in India before a first class Magistrate or in the country of origin before the authority competent under the laws of that country or by an authority specified in the First Schedule.

(4) The applicant referred to sub-rule (2) above shall furnish along with the application such other information and documents as specified in Part I of the Second Schedule:

Provided also that in the event of application for import of bulk finished formulation ready to fill, the following additional documents shall also required to be furnished:

(i) a valid manufacturing license for the finished formulation of the cosmetic ready to fill in finished form from the State Licensing Authority; and

(ii) details of registered brand owner of the finished product in India;

(5) The application for registration in accordance with sub-rule (2) shall be accompanied by a copy of the receipt of fee having been deposited as specified in Third Schedule.

(6) The fee shall be such for each category of cosmetic along with each manufacturing site with additional fee for each category of cosmetic and variant specified in the Fourth Schedule.

(7) Till such time, the online portal becomes operational for this purpose, offline application in Form COS- 1 may be made either by the manufacturer himself or by his authorised agent or by the importer in India or by the subsidiary in India authorised by the manufacturer for registration of a cosmetic referred to in sub-rule (1).

(8) The applicant shall be liable to pay testing fees directly to the testing Laboratory approved by the Central Government referred in rule 11, for examination, test and analysis of imported cosmetics in respect of cosmetics identified for such examination as specified in the Fifth Schedule.

(9) The applicant shall pay the fee as specified in the Third Schedule in connection with the expenditure to be incurred for inspecting or visiting the manufacturing premises of cosmetics approved in the foreign countries by officers authorised by Central Licensing Authority, as considered necessary.

13. Grant of import registration certificate.—(1) After examination of documents furnished with the application under sub-rule (2) of rule 12 the Central Licensing Authority may, on being satisfied, grant import registration certificate in Form COS- 2 or may reject such application for which reasons shall be recorded in writing within a period of six months from the date of application.

(2) In the event of rejection, the applicant may appeal to the Central Government within a period of forty-five days and that Government, may, after such enquiry into the matter, as considered necessary, pass orders in relation thereto within a period of ninety days from the date of appeal.

(3) In case of a new cosmetic, the applicant shall obtain prior permission in Form COS- 3 as provided in Chapter V from the Central Licensing Authority before registration of import of new cosmetic into India.

(4) A single application may be made and a single registration certificate in Form COS- 2 may be issued in respect of import of one or more cosmetics manufactured by the same manufacturer:

Provided that the cosmetics are manufactured at one factory or more than one factory functioning conjointly as a single manufacturing unit for cosmetic intended for registration.

(5) A fee as specified in the Third Schedule shall be paid for a duplicate copy of the registration certificate, if the original is defaced, damaged or lost.

14. Validity of import registration certificate.—(1) A registration certificate granted under rule 13 shall remain valid in perpetuity, subject to payment of registration certificate retention fee as specified in the Third Schedule before completion of the period of five years from the date of its issue, unless, it is suspended or cancelled by the Licensing Authority.

(2) If the licensee fails to pay the required registration certificate retention fee on or before the due date as referred to in sub-rule (1), the registration certificate holder shall, in addition to the registration certificate retention fee, be liable to pay a late fee calculated at the rate of two per cent, of the registration certificate retention fee for every month or part thereof within one hundred and eighty days and in the event of non-payment of such fee during that period, the registration certificate shall be deemed to have been cancelled.

... ..

17. Import of cosmetics already registered for import.—(1) A cosmetic manufactured in a foreign site and already registered under rule 13 for import and sale in India, may be imported by any person or entity by making an application in online portal of the Central Government in Form COS- 4 with an undertaking as specified in Sixth Schedule.

(2) After examination of documents furnished with the application under sub-rule (1), the Central Licensing Authority may, on being satisfied, subject to the conditions, grant import registration number in Form COS- 4A, or may reject such application for which reasons shall be recorded in writing within a period of six months from the date of application.

(3) An import registration number granted under sub-rule (2) shall remain valid for a period of three years from the date of its issue, unless it is suspended or cancelled.

(4) If the importer fails to comply with any of the conditions of the Import Registration Number issued in Form COS- 4A, the Central Licensing Authority may, after giving him an opportunity to show cause as to why such an order should not be passed, by an order in writing, stating the reasons therefore, suspend or cancel the import registration number for such period as it thinks, fit.

18. Prohibition of import of certain cosmetic.—(1) No cosmetic, the manufacture, sale or distribution of which is prohibited in the country of origin, shall be imported under the same name or under any other name except for the purpose of examination, test or analysis.

(2) No cosmetics shall be imported unless the "Use Before or use by" date shown on the label, wrapper or container of the cosmetic is later than six months from the date of import.

(3) No cosmetic containing hexachlorophene shall be imported.

(4) No cosmetic that has been tested on animals after the 12th day of November 2014 shall be imported into the country.

19. Documents to be supplied to the Commissioner of Customs.—Before any cosmetics are imported, a declaration signed by manufacturer or on behalf of the manufacturer or by importer or on behalf of the importer that the cosmetics comply with the provisions of Chapter III of the Act, and the rules

made thereunder, shall be supplied to the Commissioner of Customs.

20. Procedure for import of cosmetics.—(1) If the officer appointed at the port of entry by the Central Government has reason to believe that any cosmetic contravenes any of the provisions of the Act or the rules made thereunder, he may take sample of the cosmetic from the consignment for inspection.

(2) If on examination of the sample drawn as per sub-rule (1) defects are noticed, the officer shall advise the Commissioner of Customs about further action to be taken.

(3) If the suspected contravention of the provisions of the Act or the rules is such as may have to be determined by test, the officer shall send the sample to the Laboratory established for the purpose for performing such tests and the consignment of the said cosmetic shall be detained till such time, the test report on that sample is received from the Director of the said Laboratory or any other officer of the Laboratory empowered by him in this behalf:

Provided that if the importer gives an undertaking in writing not to dispose of the cosmetic without the consent of the Commissioner of Customs and to return the consignment or such portion thereof as may be required, the Commissioner of Customs may, make over the consignment to the importer.

(4) If the importer who has given an undertaking under proviso to sub-rule (1) is required by the Commissioner of Customs to return the consignment or portion thereof, he shall return the consignment or portion thereof within ten days of receipt of the notice.

(5) If the Director of the Laboratory established for the purpose by the Central Government or any other officer of the laboratory empowered by him in this behalf with the approval of the Central Government, reports to the Commissioner of Customs or to the officer mentioned in sub-rule (1) that the sample of any cosmetic in a consignment contravenes provisions of Chapter III of the Act or rules made thereunder and that the contravention is such that it cannot be remedied by the importer, the Commissioner of Customs shall communicate the report forthwith to the importer who shall within two months of receiving such communication either send back all the cosmetic of that description in the consignment to the country in which it was manufactured or to the country from which it was imported or hand it over to the Central Government which shall cause it to be destroyed:

Provided that the importer may, within thirty days of receipt of the report, make a representation against the report to the Commissioner of Customs who shall forward the representation with a fresh sample of the cosmetic to the Central Licensing Authority, who shall if necessary, after obtaining the report of the Director of the Central Cosmetics Laboratory, pass orders thereon which shall be final.

(6) If the Central Licensing Authority or any other officer empowered by the said authority in this behalf with the approval of the Central Government, reports to the Commissioner of Customs after inspection of the sample of the cosmetic and where necessary, after obtaining a test report thereon, that the

sample of the said cosmetic contravenes any provision of the Act or the rules made thereunder and that contravention is such that it can be remedied by the importer, the Commissioner of Customs shall communicate the report forthwith to the importer and permit him to import the cosmetic on his giving an undertaking in writing not to dispose of the cosmetic without the permission of the officer authorised in this behalf by the Central Government.

31. Having noted the relevant statutory provisions, the present case needs to be considered on the conspectus of a conjoint application of the provisions of the Customs Act, the Drugs and Cosmetics Act, 1940 and the Cosmetics Rules 2020. It is clearly seen from the aforesaid provisions as applicable to the imports in question, that on such goods duty of customs would be leviable under the Customs Act, if the same were intended to be cleared for home consumption, hence would be dutiable goods within the meaning of Section 2(14) of the Customs Act.

32. However, something which is at the very threshold needs to be discussed, namely, when the goods are sought to be imported into India from a place outside India, necessarily the provision of Section 2(23) defining ‘import’ which mean “bringing into India from a place outside India”, would become applicable. Such goods would be imported goods within the meaning of Section 2(25) being any goods brought into India from a place outside India, prior to their clearance for home consumption. Thus, in the context of bringing of the goods into India as ordained by Section 2(23) and Section 2(25) (supra), Section 2(27) and Section 2(28) become relevant which means “the territorial waters of India” and the “Indian customs water” to *inter alia* mean waters extending into the sea, up to the limit of ‘exclusive economic zone.....’. Further Section 2(33) when speaks about ‘prohibited goods’ it means any goods, the import or export of which is **“subject to**

any prohibition” under the Act “or any other law for the time being in force”. Also Section 11A(a) defines “illegal import” to mean the import of any goods in contravention of the provisions of the Act or “any other law for the time being in force”. It is in the context of the said provisions, Chapter VII of the Customs Act which *inter alia* provide for clearance of imported goods are required to be considered in Section 46 provides for ‘Entry of goods on importation.’

33. On a cumulative application of the provisions of the Customs Act (supra) read with the provisions of the Drugs and Cosmetics Act, 1940 and the Cosmetics Rule 2020, qua the goods in question, the following appears to be the apparent requirement of law:

- (i) The import of the goods in question which are Cosmetics certainly falls within the expression of import as defined under Section 2(23) i.e., bringing into India from a place outside India and the term India as defined under Section 2(27) includes the territorial waters of India and not the port of arrival or the goods being warehoused, the warehouse being on Indian territory, meaning thereby that the goods are imported goods once they enter the territorial waters of India.
- (ii) Such goods would be imported goods within the meaning of Section 2(25) being brought into India from a place outside India, not cleared for home consumption.
- (iii) The goods are prohibited goods within the meaning of Section 2(33), the import of which is subject to any prohibition under the Customs Act or “any other law for the time being in force”;

(iv) Also an ‘illegal import’ within the meaning of Section 11 A(a) means the import of any goods in contravention of the provision of the Customs Act “or any other law for the time being in force”.

34. Thus, necessarily by incorporation of the words “any other law” in the provisions of Section 2(33) of the Customs Act, read with the Drugs and Cosmetics Act 1940 and the Rules framed thereunder become *ipso facto* applicable to any imports apart from the applicability of the provisions of the Customs Act. In such context, Section 10 of the Drugs and Cosmetics Act (*supra*) is a provision which prescribes prohibition on import of certain drugs or cosmetics, when such provision ordains that no person shall import any Drug or Cosmetic for the import of which a licence is prescribed, and otherwise than under such license thereby making a prior licence mandatory for the imports.

35. Further, Section 10 of the Drugs and Cosmetics Act, 1940 is required to be read with the Cosmetics Rules 2020, and more particularly, Rule 12 providing for import of Cosmetics which clearly provide that no cosmetic shall be *inter alia* imported into India, unless the product has been registered in accordance with these rules by the Central Licensing Authority and making further provisions for application for registration of a Cosmetic product intended to be imported into India.

36. It is, thus as clear as the daylight, that as per the provisions of Section 10 of the Cosmetics Act, no import of Cosmetics could have been undertaken by the petitioner without a licence, as rightly contended on behalf of the Respondent.

Admittedly the goods in question were imported into India without a licence. This was not permissible, considering the conjoint effect of the aforesaid provisions. Thus, the provisions of Section 2(33) which define prohibited goods to *inter alia* mean any goods the import of which is subject to the prohibition either under the Customs Act or “any other law for the time being in force”, stand breached and/or not complied thereby rendering the goods in question “prohibited goods”.

37. Thus, the goods in question as imported by the petitioner being prohibited goods, the provisions of Section 110 of the Customs Act providing for seizure and the provision of Section 111 providing for confiscation of improperly imported goods, would stand attracted and applicable. This more particularly, clause (d) of Section 111 which provides that the goods would be liable for confiscation when goods which are imported or attempted to be imported or are brought within the Indian Customs Waters for the purpose of being imported, contrary to any prohibition imposed by or under the Customs Act or any other law for the time being in force. In such circumstances, applying the statutory provisions as discussed hereinabove, to the goods in question, which were imported by the petitioner without a license, the legal character of the goods certainly is of these goods being “prohibited goods” as defined under Section 2(33) of the Customs Act.

38. On the aforesaid complexion, the contentions as urged on behalf of the petitioner are now required to be considered. The case of the petitioner is that the petitioner had imported the goods only for the purpose of warehousing, as seen

from Bills of Entry for warehousing, presented by the petitioner for the goods to be kept in the warehouse and thereafter to be re-exported being its contention. The petitioner has also contended that for such reason there was no requirement of a license to be obtained before the said import. We do not agree on such case of the petitioner. Moreover, such contention of the petitioner militates against the clear provisions of Section 10 of the Drugs and Cosmetics Act read with the Cosmetics Rules 2020 which stand clearly attracted nay incorporated in the provisions of the Customs Act, as noted by us hereinabove. Thus, merely for the purpose of warehousing, such goods could be imported, i.e., brought into the Indian territorial waters, is an untenable contention, which has no legs to stand, considering the effect of the aforesaid provisions of the Customs Act read with the Drugs and Cosmetics Act, 1940 read with the Cosmetics Rules, 2020.

39. We are hence in agreement with Mr. Mishra, learned counsel for the Revenue drawing the Court's attention to the reply affidavit, to contend that there was never an intention of the petitioner that the goods be imported only for the purpose of warehousing and/or re-export. Such case of the petitioner appears to be a complete afterthought being presented before the Customs Authorities as also before this Court, that the goods be permitted to be re-exported as they were not meant to be cleared for home consumption. We do not find any material whatsoever to the effect that there was any prior intention before the imports were undertaken, that the goods were meant to be only stored i.e., being imported only for warehousing in India and thereafter to be re-exported. This is not recognized in law. If this was to be the sole intention, the petitioner could not have applied

for a CDSCO licence in May, 2025. The clear provisions of the Drugs and Cosmetics Act and the Cosmetics Rules 2020 as applicable to the imports of Cosmetics do not conceive a situation, that such goods can be brought into territorial waters merely for the purpose of warehousing and/or on that basis, that after the arrival of the goods, a license can be applied. This is totally unacceptable and in fact illegal. The provisions of law as discussed hereinabove do not permit that these goods can be brought into the Country only for the purpose of warehousing and that too contravening and/or circumventing the provisions of law. The consequence of such contentions as urged on behalf of the petitioner, would be to the effect that Indian territory permits prohibited goods to be brought into India, merely for the purpose of warehousing, on a specious consideration that warehousing is cheaper in India than in other countries, and therefore such unlicensed imports be permitted, for the goods to be ultimately re-exported. This would be too far fetched. We do not gather any such intention under any provisions of law as urged before us. The imports in question being *per se* illegal cannot be labelled to be legitimate or legal, merely because the petitioner intends to re-export the goods and for which no duty according to the petitioner is attracted.

40. We may observe that at the first blush, the contention of Dr. Kantawala appeared to be attractive, that as the Bills of Entry presented by the petitioner were for warehousing, the goods were intended to be re-exported, hence, the provisions of Section 69(1) would clearly become applicable to the effect that any warehoused goods may be exported to a place outside India, without payment of

import duty. However, the fallacy in such contention is that Section 69 would apply only to the warehoused goods which are legally “imported into India” or in accordance with law and which are not prohibited goods. The reason being that the very foundation of these goods to remain stored in a warehouse, even for the purpose of re-export, can only be under the legal character of the goods is that the same are not prohibited or contraband and/or are lawful goods. If the goods are prohibited goods, then certainly they fall within the purview of the relevant provisions of the Customs Act, for which appropriate action needs to be taken against such goods, including confiscation by following the procedure in law. We are, thus, not persuaded to accept the petitioner’s contention that in the fact situation, Section 69(1) would become applicable to the goods in question.

41. The reliance as placed on behalf of the petitioner on the decision of the Supreme Court in **Garden Silk Mills Ltd. Vs. Union of India**³, would not assist the petitioner and more particularly when reliance is placed on paragraph 15. The principles of law as laid down in such decision are in the context of the Court considering the provisions of Section 12 of the Customs Act providing for dutiable goods. In such context, the question which fell for the consideration of the Supreme Court was to the effect, that while assessing Customs duty payable in respect of imported goods, whether the Customs Authorities can add/include landing charges in arriving at the value of those goods. The Customs Authorities in determining the value of the goods, in ascertaining the amounts of duty, added to the CIF price, the landing charges, which were paid to the port trust authorities

3 1999 (113) E.L.T. 358 (S.C.)

and on payment of such Custom duty, the goods were cleared and used by the appellants. On such backdrop, the appellant filed Writ Petition before the High Court contending that landing charges which were paid at the rate of 3/4% of the CIF value of goods, were wrongly added while arriving at the assessable value of those goods and therefore, the authorities be directed by the High Court to refund Rs.69,030.60 which was the amount of duty relatable to the landing charges. The High Court opined that the Customs Authorities had rightly added the landing charges to the CIF value of the goods for the purpose of determining the customs duty, hence, no refund was due to the appellants. It is in such context, the Court examined provisions of Section 12 and made the following observations as relied upon on behalf of the petitioner in paragraph 15 and 16:

15. The question as to whether the import is completed when the goods entered the territorial waters and it is the value at that point of time which is to be taken into consideration is no longer res integra. This contentions was raised in Union of India v. Apar Industries Limited -1999 (112) E.L.T. 3 (S.C) = 1999 (5) J.T. 160. In that case the day when the goods entered the territorial waters, the rate of duty was nil but when they were removed from the warehouse, the duty had become leviable. The contention which was sought to be raised was that what is material is the day when the goods had entered the territorial waters because by virtue of Section 2(23) read with Section 2(27) the import into India had taken place when the goods entered the territorial waters. Following the decision of this Court in Bharat Surfactants (M/s) (Private) Ltd. and Another v. Union of India and Anr, 1989 (43) E.L.T 189 (S. C.) = 1989 (4) SCC 21 and Dhiraj Lal H. Vahra and Ors. Vs. Union of India and Ors. 1993 (66) E. L. T. 551 (SC) = 1993 (supp. 3) SCC 453, this Court came to the conclusion in Apar's Pvt. Ltd., case that the duty has to be paid with reference to the relevant date as mentioned in Section 15 of the Act.

16. It was further submitted that in the case of Apar's Private Limited this Court was concerned with Section 14 and 15 but here we have to construe the word "imported" occurring in Section 12 and this can only mean that the moment goods have entered the territorial waters, the import is complete. We do not agree with the submission. This Court in its opinion in Re. The bill to Amend Section 20 of the Sea Customs Act, 1878 and Section 3 of the Central Excise and Salt Act, 1944, 1964 (3) 787 at page 823 observed as follows:

"Truly speaking, the imposition of an import duty, by and large, results in a condition which must be fulfilled before the goods can be brought inside the customs barriers i.e. before they form part of the mass of goods within the

country."

It would appear to us that the import of goods into India would commence when the same cross into the territorial waters but continues and is completed when the goods become part of the mass of goods within the country; the taxable event being reached at the time when the goods reach the customs barriers and the bill of entry for home consumption is filed."

(emphasis supplied)

42. We are hence unable to accept the petitioner's contention that the aforesaid observations would assist the petitioner to support its contentions that the imports in question would be regarded to be legal. Certainly in such case, the Supreme Court was not considering any issue similar to the one involved in the present proceedings.

43. In the light of the above discussion, we are also not inclined to consider the petitioner's contention on the valuation report as submitted by the chartered engineer as appointed by the department to value the goods, as we do not intend to delve on such contentions at this stage in the present proceedings. Suffice it to observe that the valuation needs to be undertaken only by a person who is an expert, considering the nature of the goods. All contentions on such issue are accordingly kept open.

44. Considering the aforesaid discussion, we are in agreement with Mr. Mishra, when he places reliance on the decision of the Division Bench of the Madras High Court in **ALM Enterprises Vs. Commissioner of Customs (Imports), Chennai**⁴, in which the Court considering the provisions of the Rule 125 of the Drugs and Cosmetics Rules, 1945 [as applicable at the relevant time, now repealed by the Cosmetics Rules 2020], the Court reached to a similar conclusion applying the

⁴ 2017 (353) E.L.T. (Mad)

provisions of Rule 129, it was held that the import of Cosmetics without obtaining the Registration certificate (in form 43) was not a legal import. The relevant observations made in such context are required to be noted which read thus:

“37 It also takes us to the notification G.SR.426(E) dated 19-5-2010 published by the Ministry of Health and Family Welfare Department, Government of India. Through this notification the Drugs and Cosmetics (4th Amendment) Rules, 2010, framed in exercise of powers conferred by Sections 12 and 33 of the Drugs and Cosmetics Act, 1945 have been notified. By this amendment, Rule 129 has been substituted and the new Rule 129 which was brought into force with effect from 1st April, 2011 reads as under-

"129. Registration of cosmetic products imported into the country. - No cosmetic shall be imported into India unless the product is registered under the rules by the licensing authority appointed by the Central Government under rule 21 or by any person to whom such powers may be delegated under rule 22."

Thus, no cosmetic, shall be imported into India unless that product is registered under the rules by the licensing authority. Rule 129A dealt with the Form and manner of application for Registration Certificate for importing cosmetics referred to above. Such application shall be made for Registration of cosmetics intended to be imported into India in Form 42 by every importer and shall be accompanied by a fee of 250 US dollars or its equivalent to Indian rupees for each brand of cosmetics. Under Rule 129(C), the licensing authority was required to issue a Registration Certificate in Form 43 subject to the conditions contained therein. **There is no material available on record to vouch for any such Registration Certificate in Form 43 has been obtained by or on behalf of the importer.** Under Rule 129(D), the Registration Certificate so issued shall be valid for a period of three years from the date of its issue unless it is sooner suspended or cancelled. Under Rule 129(G), no cosmetic shall be imported unless it complies with the specifications prescribed under Schedule S and Schedule Q or any other standards of quality and safety applicable to it and other provisions under the rules. Under Rule 129(H), no cosmetic shall be imported unless it is packed and labeled in conformity with the Rules in Parts XV. When we spare a look at Form 43, the Registration Certificate, from Para 2 thereof the following becomes clear

“2. Name(s) of cosmetics, along with their brand names and pack size(s) and variants which may be imported under this Registration Certificate
(1)
(2)
(3)”

The import of cosmetics made without obtaining the Registration Certificate (Form 43) is in clear violation of the above provisions. Thus, every importer of

cosmetics was required to comply with the above regulatory regime prescribed by the Drugs and Cosmetics (4th Amendment) Rules, 2010. The finding of fact recorded by the adjudicating Commissioner of Customs in the present case is that this legal regime has not been complied with by the importer

.....

39. In the instant case, it is recorded in Para 49 of the Order-in-Original that all cosmetic products including air fresheners and other toiletries which are imported for sale in India need to be registered with the licensing authority as defined under Rule 21 of Drugs and Cosmetics Rules, 1945. In the instant case, the goods are found imported without obtaining the registration certificate from the Central Drug Standard Control Organization and therefore, it is found that the importer did not possess necessary permission/registration certificate from the competent authority under the Drugs and Cosmetics Rules, 1945. **In other words, goods which are liable to be Imported subject to fulfilment of certain conditions, when so imported without fulfilling or satisfying such conditions amount to importing prohibited goods in terms of Section 11 read with Section 125 of the Act. Therefore, we find no merit in the contention canvassed that such of those clandestinely imported cosmetics and toiletries goods should also be permitted to be redeemed by the Commissioner of Customs and failure to do so vitiates the order is without any merit or substance.** The Commissioner of Customs has no power to waive the conditions subject to which such cosmetic products can be imported as he is not the Competent Authority but someone else. Hence, the exercise of discretion has been properly carried out by the Commissioner of Customs.”

(emphasis supplied)

45. Before parting, we may observe that the goods in question are meant for human use/consumption. The Drugs and Cosmetics Act, 1940 is an Act intended to regulate the import, manufacture, distribution, sale of drugs and cosmetics. Thus, such legislation with the rules framed thereunder prescribe standards to be complied by the drugs being imported, which may be cleared, sold and/or distributed in India. Such products more particularly being imported, concern the health of the people, wherever, even when the goods are sought to be re-exported. Thus, the provisions of the Drugs and Cosmetics Act and the Rules framed thereunder read with provisions of the Customs Act, qua any imports are required to be strictly implemented, and more importantly, considering the larger public interest and the ill-effects of the sub-standard and unlicensed products, when they

are being imported in a clandestine manner, and smuggled into the Indian territory.

46. In the light of the above discussion, we find no merit in this petition. It is accordingly rejected. No costs.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)