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

+ **W.P.(C) 3200/2025, CM APPL. 14931/2025 & CM APPL. 14932/2025**

MEA AME PVT. LTD.

.....Petitioner

Through: Mr. Vikas Pahwa, Sr Adv. with Ms. Preeti Pahwa, Mr. Prabhav Ralli, Ms. Nancy Shamim, Mr. Dev Vrat Arya & Mr. Syed Asif Iqbal, Advs. (M: 9999249666)

versus

DEPUTY COMMISSIONER, CUSTOMS (PREVENTIVE), NEW DELHI

.....Respondent

Through: Mr. Aditya Singla, SSC.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

ORDER

% **12.03.2025**

1. This hearing has been done through hybrid mode.

CM APPL. 14932/2025 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

W.P.(C) 3200/2025 & CM APPL. 14931/2025

3. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India *inter alia* seeking to quash the detention memo dated 27th December 2024, the seizure memo dated 28th January, 2025 by which the Respondent authority is said to have seized and detained the goods of the Petitioner under Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Transport, Sale, Distribution, Storage and



Advertisement) Act, 2019 (hereinafter '*the Act*').

4. The case of Petitioner is that it had imported the certain goods from China in the month of April 2024 which was detained by the Customs Department had detained the same on entry. It is also submitted that the goods, upon initial enquiry, were provisionally released to the Petitioner *vide* various No Objection Certificates. However, the Respondent/Department had conducted a search in the Petitioner's premises on 27th December, 2024 and seized devices which were imported by the Petitioner.

5. Mr. Vikas Pahwa ld Counsel for the Petitioner submits that the subject goods are empty atomizer devices imported by the Petitioner for the purpose of being filled with a herbal product, following which they are sold as a medical product used for enabling smoking de-addiction. He further submits that the product of the Petitioner (*i.e.*, atomizers filed with the herbal product) is licensed by the State Licensing Authority, Haryana under Medical Devices Rules, 2017 as class A category of medical devices.

6. In this background, the learned Counsel for the Petitioner contends that the Customs Authorities do not have any jurisdiction to seize the subject goods under the Act because licensed goods are not prohibited under the Act. He relies on Section 3 of the Act in this regard and reads as under:

*“(d) "electronic cigarette" means an electronic device that heats a substance, with or without nicotine and flavours, to create an aerosol for inhalation and includes all forms of Electronic Nicotine Delivery Systems, Heat Not Burn Products, e-Hookah and the like devices, by whatever name called and whatever shape, size or form it may have, **but does not include any product licensed under the Drugs and Cosmetics Act, 1940.**”*

As per the above definition, since the product is licensed, the subject goods would not be considered as an electronic cigarette prohibited and liable to



seizure upon import under the Act.

7. The important question that the petition raises is whether the devices which are being imported by the Petitioner can be seized by the Customs Authorities or not.

8. Other issues which arise in this petition include -

(i) whether the Petitioner has to obtain a license from the DCGI under the Drugs and Cosmetics Act, 1940 to be exempted under Section 3 of the Act?,

(ii) Whether the empty devices without its contents are in itself exempted under the Act when the licenses are provided only for the final herbal product?

9. Let the counter affidavit clarifying all these issues and any other relevant aspects be filed within four weeks. Rejoinder, thereto, be filed within two weeks.

10. Let the physical products be produced by the Petitioner on the next date of hearing.

11. List on 30th April, 2025.

PRATHIBA M. SINGH, J

RAJNEESH KUMAR GUPTA, J

MARCH 12, 2025

dj/Ar.