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

\+ **W.P.(C) 17723/2025, CM APPL. 73164/2025, CM APPL. 73165/2025 & CM APPL. 73166/2025**

M/S TALBROS SEALING MATERIAL PRIVATE LIMITED .....Petitioner

Through: Mr. Rajat Mittal, Ms. Krati Agrawal, Mr. Suprateek Neogi & Mr. Priyanshu, Advs.

versus

ADDITIONAL COMMISSIONER OF CUSTOMS EXPORT & ANR. .....Respondents

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

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

O R D E R

% 21.11.2025

1. This hearing has been done through hybrid mode.

CM APPL. 73165/2025 (for exemption)

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

CM APPL. 73166/2025

3. This is an application seeking permission to file lengthy synopsis and list of dates. For the reasons stated therein, permission is granted. Application is disposed of.

W.P.(C) 17723/2025, CM APPL. 73164/2025

4. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India, *inter alia*, challenging the Order-in-Original dated 25th June, 2025 (hereinafter, *'impugned order'*) passed by the Office of the Commissioner of Customs (Export). *Vide* the impugned order, certain demands are sought to be raised and recoveries have been directed against the

Petitioner.

5. The Petitioner is in the business of export of sealing material such as rubberised cork gaskets, rubber gaskets and also components of machinery and motor vehicles. The Petitioner had deposited Integrated Goods and Services Tax (hereinafter, *'IGST'*) for some of its exports and had also obtained a refund of the same. In respect of the said refund, a Show Cause Notice (*hereinafter 'SCN'*) was issued on 6th August, 2024.

6. The case of the Department was that the Petitioner had wrongly classified the products under HSN 40169340 instead of HSN 45041010.

7. The SCN was also proposed to recover the inadmissible drawback amounts and export benefits which the Petitioner had obtained. Thereafter, replies to the SCN were submitted by the Petitioner and hearing was held. The impugned order dated 25th June, 2025 was thereafter passed by the Office of the Commissioner of Customs (Export).

8. The operative portion of the impugned order reads as under:

> *"i) I reject the classification of cork gasket under HSN 84841010 in shipping bill no.1120004 dated 18.05.2023 and classification of rubberized cork gasket under HSN 40169340 in shipping bill no. 1457601 dated 01.06.2023 and hereby order to classify the same under HSN 45041010.*
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> *ii) I hold that the goods entered for exportation by the exporter under Shipping Bill No. 1120004 dated 18.05.2023 and 1457601 dated 01.06.2023 be confiscated under Section 113 of the Customs Act, 1962 and therefore, I impose redemption fine of Rs 2,50,000/- and Rs 30,000/- respectively on the exporter under section 125 of the Customs Act. 1962.*
>
> *iii) I order that the claims for 1GST amount of Rs 5,12,006.55/-, Drawback amount of Rs 20,206/- and RoDTEP amount of Rs 28,443 in respect of impugned*

Shipping Bill No. 1120004 dated 18.05.2023 be rejected and the same be recovered from the exporter (if already disbursed) along with the applicable interest by the concerned jurisdictional authorities;

iv) I order that the claims for IGST amount of Rs 61,642.94/-, Drawback amount of Rs 4,452/- and RoDTEP amount of Rs 3.424 in respect of impugned Shipping Bill No. 1457601 dated 01.06.2023 be rejected and the same be recovered from the exporter (if already disbursed) along with the applicable interest by the concerned jurisdictional authorities;

v) I impose a penalty of Rs. 3,00,000/- on M/s. Talbros Sealing Materials Pvt. Ltd. under Section 114 (iii) of the Customs Act, 1962 for acts of wilful omission & commission as discussed in the foregoing paras.

vi) I impose a penalty of Rs. 3,00,000/- on M/s. Talbros Sealing Materials Pvt. Ltd. under Section 114 AA of the Customs Act, 1962 for acts of wilful omission & commission as discussed in the foregoing paras.

vii) I hold that any amount sanctioned as drawback or any other export incentives, but pending for disbursal, if any, shall be withheld and adjusted against the recovery of excess export incentives paid as aforesaid under the provisions of the Customs Act, 1962 and rules made thereunder."

9. The present petition raises two issues:

   (i) Firstly, relating to classification of the goods; and

   (ii) Secondly, ld. Counsel for the Petitioner raises a challenge that the SCN could not have been issued by the Customs Department and it could have only been issued by the GST Department.

In order to buttress this submission, reliance is placed upon Section 2(12), Section 5, Section 7(5) and Section 20 of the Integrated Goods and Services Tax Act, 2017 (hereinafter, *'IGST Act'*).

10. On the basis of the said provisions, it is argued by the ld. Counsel for

the Petitioner that demands and recovery under the IGST Act would be governed by the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter, *'CGST Act'*). Thus, under Section 73 of the CGST Act, only a *proper officer* notified under Section 73 of the CGST Act can raise any demand or seek to recover.

11. On the other hand, Ms. Anushree Narain, ld. SSC for the Respondent submits that in terms of Section 2(2) of the Customs Act, 1962, the Customs Officers would also be *'proper officers'* in order to raise demands of any tax in respect of exports.

12. Ms. Narain, ld. SSC also submits that the impugned order is an appealable order.

13. Heard. Two issues that are raised in the present case are relating to classification and the power of the Commissioner of Customs to issue the SCN. Insofar as classification is concerned, the Petitioner may avail of his appellate remedies. However, insofar as the question as the inter-play between the provisions of the Customs Act, 1962, the IGST Act and CGST Act is concerned, the matter requires consideration.

14. Accordingly, issue notice. Ms. Anushree Narain, ld. Senior Standing Counsel accepts notice.

15. Let the Customs Department and the CGST Department file a joint affidavit in this matter as to who would be the 'proper officer' in such a case.

16. The Petitioner is permitted to file the appeal within a period of 30 days in respect of the classification. If the appeal is filed within a period of 30 days, it shall not be dismissed on the ground of limitation and shall be adjudicated on merits.

17. Let a counter affidavit be filed within four weeks. Rejoinder be filed

within four weeks, thereafter.

18. List before the Joint Registrar on 8th January, 2026.

19. List before the Court on 24th February, 2026.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

NOVEMBER 21, 2025
Rahul/ck