$~7 & 8.

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

\+ **W.P.(C) 9824/2019 and C.M. No. 40523/2019 & 40524/2019**

INDIAN CABLE NETCOMPANY LIMITED ..... Petitioner

Through: Mr. S. Ganesh, Sr. Advocate with Mr.A.R. Madhav Rao, Mr. Tushar Joshi and Mr. Aman Bansal, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Ravi Prakash, CGSC with Mr.Farman Ali, Advocates for respondent No. 1.
Mr. Satish Aggarwala and Mr. Vineet Sharma, Advocates for respondent Nos. 2 and 3.

\+ **W.P.(C) 9825/2019 and C.M. No. 40527/2019 & 40528/2019**

SITI NETWORKS LIMITED ..... Petitioner

Through: Mr. S. Ganesh, Sr. Advocate with Mr.A.R. Madhav Rao, Mr. Tushar Joshi and Mr. Aman Bansal, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Ravi Prakash, CGSC with Mr.Farman Ali, Advocates for respondent No. 1.
Mr. Satish Aggarwala and Mr. Vineet Sharma, Advocates for respondent Nos. 2 and 3.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **24.10.2019**

After some arguments, Mr. Ganesh, on instructions, gives up the challenge to the show-cause notice on the ground that pre-consultation was not held in terms of Section 28(1) of the Customs Act read with pre-consultation regulations considering the fact that the show-cause notice was issued under Section 28(4) and not Section 28(1) of the Customs Act.

The next submission of Mr. Ganesh is that a perusal of the show-cause notice shows that the respondents have proceeded on the basis that the country of origin certificate appears to have been fraudulently obtained. In this regard, he has drawn our attention to paragraph 6.1.14 of the show-cause notice.

The respondents have filed an affidavit on advance notice wherein, in paragraph 9(a), the respondents have stated as follows:

> "*(a) In the present case, it has been clearly established in the show cause notice issued to the petitioner that the petitioner had paid License Fees for Conditional Access System Software inbuilt in the Set Top Boxes imported by the petitioner (para Nos. 4.2, 5 and 6 of the show cause notice). On inclusion of the value of such cardless client (license fee for CAS already inbuilt in STB) for valuation purpose of imported Set Top Boxes, they do not fulfil the condition for origin criteria as per notification No. 189/2009 -Customs (N.T.) and hence not eligible for Customs duty exemption provided under notification No. 46/2011-Customs dated 01.06.2011 (as amended). It is clear that the Country of Origin Certificates submitted by the petitioner is liable to be rejected since they appear to have been obtained on the basis of fraudulent details/documents and on the basis of suppression of facts and wilful mis-statement. Since all the requisite details such as payments of license fees/royalties on the softwares embedded in these imported set top boxes have not been submitted to the concerned authorities. The country of Origin certificates do not contain the details of invoices and description of goods matching with those in the*

> *bills of entry and the prescribed details are not available in these certificates. It is also appears that the said COO certificates are liable to be rejected, since they have \ been obtained fraudulently, by suppression of facts of cardless client CAS software being embedded in the Chipsets from no~-ASEAN region, payment of License Fees towards such cardless client Conax VC Card Software by the petitioner. Further, the petitioner also has not furnished the break-up of overhead costs mentioned in the BOM of STBs claimed to be originating in Vietnam/Thailand. The assessable values of the said imported cardless STB have to be re-determined by including the amounts paid as License Fees for CAS inbuilt in STB (cardless client) under Rule 10(1)(c) of CVR, 2007. Hence, the Petitioner is liable to pay the applicable duty on such cardless Set Top Boxes imported by them.*"

From the above, it appears that the stand taken by the respondents is that the certificate of origin does not contain the details of the invoices and description of goods matching with those in the bills of entry and the prescribed details are not available in these certificates. It is also alleged that the said certificates of origin are liable to be rejected, since they have been obtained fraudulently, by suppression of fact of Cardless Client CAS software being embedded in the Chipsets from non-ASEAN region, payment of License Fees towards such cardless client Conax VC Card Software by the petitioner/ ICNCL.

The petitioners have filed the rejoinder and a sample certificate of origin has been placed on record, which is at page 32 of the said rejoinder dated 18.10.2019.

We direct the respondents to file an affidavit explaining their averments in paragraph 9(a) of their affidavit, particularly in the light of the documents filed by the petitioner along with the rejoinder. The affidavit be filed within two weeks. Rejoinder, if any, be filed before the next date.

List on 21.11.2019.

Dasti.

VIPIN SANGHI, J

SANJEEV NARULA, J

OCTOBER 24, 2019

B.S.Rohella