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

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+ **W.P.(C) 7425/2017 & CM APPL. 30649/2017 (Stay)**

KUNDAN CARE PRODUCTS LIMITED Petitioner

Through : Mr. Neeraj Kishan Kaul, Senior
Advocate, Mr. Tarun Gulati,
Mr.Kishore Kunal, Mr.Prashant
Tahiliani, Advocates.

versus

UNION OF INDIA & ANR. Respondents

Through : Mr. Vikas Mahajan, CGSC with
Mr.S.S.Rai, Advocate for UOI/R1.
Mr. Harpreet Singh, Senior Standing
Counsel for R2.

WITH

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+ **W.P.(C) 7426/2017 & CM APPL. 30650/2017 (Stay)**

AUGMONT ENTERPRISES PRIVATE LIMITED..... Petitioner

Through : Mr. Tarun Gulati, Mr.Kishore Kunal,
Mr.Prashant Tahiliani, Advocates.

versus

UNION OF INDIA & ANR. Respondents

Through : Mr. Vikas Mahajan, CGSC with
Mr.S.S.Rai, Advocate for UOI/R1.
Mr. Harpreet Singh, Senior Standing
Counsel for R2.

WITH

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+ **W.P.(C) 7427/2017 & CM APPL. 30651/2017 (Stay)**
ZAVERI AND COMPANY PRIVATE LIMITED..... Petitioner
Through : Mr. Tarun Gulati, Mr.Kishore Kunal,
Mr.Prashant Tahliliani, Advocates.

versus

UNION OF INDIA & ANR. Respondents
Through : Mr. Vikas Mahajan, CGSC with
Mr.S.S.Rai, Advocate for UOI/R1.
Mr. Harpreet Singh, Senior Standing
Counsel for R2.

WITH

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+ **W.P.(C) 7428/2017 & CM APPL. 30652/2017 (Stay)**
SUNANDA POLYMERS Petitioner
Through : Mr. Tarun Gulati, Mr.Kishore Kunal,
Mr.Prashant Tahliliani, Advocates.

versus

UNION OF INDIA & ANR. Respondents
Through : Mr. Vikas Mahajan, CGSC with
Mr.S.S.Rai, Advocate for UOI/R1.
Mr. Harpreet Singh, Senior Standing
Counsel for R2.

WITH

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W.P.(C) 7429/2017 & CM APPL. 30653/2017 (Stay)

SHRI SAI VISHWAS POLYMERS

..... Petitioner

Through : Mr. Tarun Gulati, Mr.Kishore Kunal,
Mr.Prashant Tahliliani, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through : Mr. Vikas Mahajan, CGSC with
Mr.S.S.Rai, Advocate for UOI/R1.
Mr. Harpreet Singh, Senior Standing
Counsel for R2.

WITH

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W.P.(C) 7430/2017 & CM APPL. 30654/2017 (Stay)

KHANDWALA ENTERPRISES PRIVATE LIMITED Petitioner

Through : Mr. Tarun Gulati, Mr.Kishore Kunal,
Mr.Prashant Tahliliani, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through : Mr. Vikas Mahajan, CGSC with
Mr.S.S.Rai, Advocate for UOI/R1.
Mr. Harpreet Singh, Senior Standing
Counsel for R2.

AND

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W.P.(C) 7432/2017 & CM APPL. 30657/2017 (Stay)

DIAMOND FOREVER INTERENATIONAL

..... Petitioner

Through : Mr. Tarun Gulati, Mr.Kishore Kunal,
Mr.Prashant Tahliliani, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through : Mr. Vikas Mahajan, CGSC with
Mr.S.S.Rai, Advocate for UOI/R1.
Mr. Harpreet Singh, Senior Standing
Counsel for R2.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE PRATHIBA M. SINGH

ORDER

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25.08.2017

1. Notice. Mr. Vikas Mahajan, learned Central Government's Standing Counsel accepts notice for Union of India/Respondent No. 1. Mr. Harpreet Singh, learned Senior Standing Counsel accepts notice for Central Board of Excise and Customs/Respondent No. 2.

2. It is pointed out by Mr. Neeraj Kishan Kaul, learned Senior Counsel for the Petitioners that the challenge in these petitions is *inter alia* to the impugned Notification dated 17th August 2017, whereby the Respondents have inserted Rule 44 A in the Central Goods and Services Rules, 2017 (CGS Rules) requiring reversal of 5/6th of the CENVAT Credit which had already accrued to the Petitioner on account of payment of additional duty of customs levied under Section 3(1) of the Customs Tariff Act, 1975 ("Countervailing Duty"/"CVD") paid at the time of importation of gold dore bar. The said CVD was allowed to be carried forward in full as a transitional measure under Section 140 of the Central Goods and Services Tax Act, 2017 ('CGST Act'). It also provided credit of the entire CVD paid on inputs held

in stock and inputs contained in semi-finished or finished goods held in stock on 1st July 2017 on complying with certain conditions. The Petitioners state that they fulfilled all the conditions and the credit of the CVD paid on imported gold dore bars accrued to them.

3. However, it is stated that in exercise of rule-making powers under Section 164, the Respondent issued the impugned Notification on 17th August 2017 which inserted Rule 44 A on the CGS Rules and has sought to deny the credit already accrued to the Petitioner. Rule 44 A is challenged as being *ultra vires* Section 140 of the CGST Act as well as the rule making powers under Section 164 thereof. It is contended that the impugned Notification is in grossly discriminatory and unreasonable and has imposed the restrictions which are applicable only to imported gold dore bars. The contention is that the impugned Notification has singled out only imported gold dore bars resulting in imposition of a higher burden of tax on these goods as compared to other imported goods as well as compared to any similar domestic goods. It is submitted out that if the interim orders are not granted then the credit of CVD already availed and utilized for payment of tax on finished goods by the Petitioners would be electronically reversed and they would have to deposit cash. This would be severely prejudicial to them.

4. The Court is of the view that the Petitioners have made out a *prima facie* case for grant of interim relief in their favour. Further, the balance of convenience is in their favour for grant of interim relief. Accordingly, it is directed that till the next date of hearing, no coercive steps shall be taken by the Respondents to recover the credit already availed by the Petitioners.

5. Reply, if any, be filed within three weeks. Rejoinder thereto, if any, be filed before the next date of hearing.

6. List on 25th September, 2017.

7. *Dasti* under the signatures of the Court Master.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

AUGUST 25, 2017

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