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

+ W.P.(C) 4676/2019

SANDIPAN KHAN

.....Petitioner

Through: Mr. Uddyam Mukherjee, Mr. Swapnil
Pattanayak, Advocates.

versus

THE CHAIRMAN, CENTRAL BOARD OF INDIRECT TAXES
AND CUSTOMS AND ORS.Respondents

Through: Mr. Anurag Ojha Sr. Standing
Counsel for R1 and R2 with Mr.
Subham. Kumar Advocate.
Mr. Ravi Prakash, CGSC, Ms. Taha
Yasin, Mr. Yasharth, Advocates.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

05.11.2024

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1. The present writ petition has been filed seeking the following reliefs:-

- a) *issue a writ in the nature of a declaration, declaring that the Impugned Notification being Custom Notification No. 405/12/88-CUS-III dated 05.10.1988 issued by Respondent No. 1 & 2 under the Customs Act, 1962 forwarded on 06.10.1988 to all State Govt./Union Territories for appropriate action under law to Ban the import of the Book titled The Satanic Verses is ultra vires the Constitution of India; and*
- b) *issue a writ of mandamus or any other appropriate writ, order or direction and quash / set aside the Impugned Notification being Custom Notification No. 405/12/88-CUSIII dated 05.10.1988 under the Customs Act, 1962; and*
- c) *issue a writ of mandamus or any other appropriate writ, order or direction and quash / set aside direction / advisory issued by the Ministry of Home Affairs i.e. the Respondent No. 3 dated 10.11.1988 emanating from the Impugned Notification being Custom Notification No. 405/12/88-CUSIII dated 05.10.1988; and*

d) issue a writ in the nature of declaration, declaring that the Petitioner may proceed to import the Book titled The Satanic Verses from its publisher / international reseller /Indian or International e-commerce websites and such act of the Petitioner and such seller will not constitute a violation of the Impugned Notification being Custom Notification No. 405/12/88-CUS-III dated 05.10.1988 under the Customs Act, 1962 forwarded on 06.10.1988 to all State Govt./Union Territories for appropriate action under law to Ban the import of the Book titled The Satanic Verses diwdi direction issued by the Ministry of Home Affairs dated 10.11.1988 emanating from the Impugned Notification being Custom Notification No. 405/12/88-CUSIII dated 05.10.1988/and

e) Pass any other/further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

2. Learned counsel for the petitioner submits that the petitioner has been compelled to approach this Court as he was unable to import the book “Satanic Verses” by Salman Rusdie on account of it being banned by the respondent no.3 vide Custom Notification No. 405/12/88-CUSIII dated 05.10.1988. However, the said notification is neither available on any of the respondent’s website or is available with any of the respondents. In fact, the respondents have also been unable to produce/ file it before this Court.

3. In support of his plea, he draws our attention to the reply to the RTI received by the petitioner on 29.11.2017 from the office of the respondent no. 3, wherein the petitioner was informed of the aforesaid book being banned and specifically to an earlier order dated 02.11.2022, as per which even the learned counsel for the respondents had informed this Court that the said notification was untraceable, and therefore, could not be produced.

4. Today, while addressing arguments learned counsel appearing for respondent nos. 1 and 2 again expresses the said situation and learned counsel for respondent no. 3 submits that the respondent no. 3 has directed respondent no. 1 and 2 to defend the petition on their behalf as well.

5. From the aforesaid, what emerges is that none of the respondents could produce the said Notification dated 05.10.1988 with which the petitioner is purportedly aggrieved and in fact the purported author of the said notification has also shown his helplessness in producing a copy of the said notification during the pendency of the present writ petition since its filing way back in 2019.

6. In the light of the aforesaid circumstances, we have no other option except to presume that no such notification exists, and therefore, we cannot examine the validity thereof and dispose of the writ petition as infructuous.

7. The petitioner will, therefore, be entitled to take all actions in respect of the said book as available in law.

REKHA PALLI, J

SAURABH BANERJEE, J

NOVEMBER 5, 2024/NG