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

Date of Decision: 16th April 2026

+ W.P.(C) 5063/2026 & CM APPL. 24816/2026

M/S AKEE INTERNATIONAL
BEHIND NAI MATA MANDIR, THATHAR ROAD,
NEAR NASHA MUKTI KENDRA, DELHI ROAD, AMER,
JAIPUR-302028 (RAJASTHAN)
THROUGH ITS SOLE PROPRIETOR
SHRI AAKIB MAJID MIR

.....PETITIONER

Through: Mr. Mir Akhtar Hussain, Ms. Sonia
Goswami and Mr. Rakesh Kumar
Pant, Advs.

Versus

1. **DEPUTY COMMISSIONER OF CUSTOMS**
(AIR CARGO EXPORT),
NEW CUSTOM HOUSE, NEAR IOI AIRPORT,
NEW DELHI-110037

.....RESPONDENT NO. 1

2. **ASSISTANT COMMISSIONER OF CUSTOMS**
(Air Cargo Export),
New Custom House, Near IGI Airport,
New Delhi-110037

.....RESPONDENT NO. 2

3. **UNION OF INDIA**
Through Secretary
Ministry of Finance, Department of Revenue



(Central Board of Indirect Taxes and Customs)
Room No 46, North Block,
New Delhi-110001
Through Standing Counsel, Union of India

.....**RESPONDENT NO. 3**

Through: Mr Premtosh K Mishra, CGSC with
Mr Shrey Sharma, Mr Anubhav
Upadhyay, Mr Arpit Bamal, Advs.

CORAM:
HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

NITIN WASUDEO SAMBRE, J.

CM APPL. 24817/2026 (Exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 5063/2026

1. Heard.
2. The prayer in the petition read thus:

*“(1) Quashing the Show Cause Notice No.09/CLM/AC/Export Shed/ACE/2024 dated 25.01.2024 issued by the respondent no. 2 against the petitioner and the consequent proceedings initiated by and pending before the respondent no. 1.
(2) quashing the order/notice dated 24.02.2026 declining written request/representation dated 15.04.2025 for re-testing of the two seized shawls.
(3) as a consequence to the quashing of the impugned Notice and proceedings, this Hon'ble Court may be pleased to direct the Respondent No. 1 to get the impugned shawls tested by some approved BIS lab conducting the forensic testing of the Pashmina and Shahtoosh material as per Amendment No. 1 to IS17269:2021 Textile-Identification, Labeling and Marking of Pashmina Products (First Revision).*



(4) declare that reliance on WII lab report by the respondent no. 1 as arbitrary and unsustainable.”

3. The petitioner was served with a Show-Cause Notice dated 25th January, 2024, wherein the shawls which were sought to be exported, samples of which were drawn and sent for analysis. The first report of the analysis reads as under:

“Based on morphological features and standard microscopic hair characteristics (Cuticular and Medullary patterns) as per protocols and comparison with the reference material, it is concluded that shawls marked by us F-4357/1-2 and F-4357/2-2, sent vide above reference, contain hair of Tibetan antelope (Panthelops hodgsonii).”

4. The said report is issued by the Wildlife Institute of India (WII). The report analysis speaks of containing hair of the Tibetan Antelope, which is an endangered species in the shawls, which are sought to be exported by the petitioner.

5. Since the petitioner was not in agreement, he chose to have the second test in the matter and thus accordingly, a second test report was drawn at the behest of the petitioner, which is inconclusive.

6. The said test report, is dated 08th September, 2022, which reads as under:

“we are not sure whether DNA analysis is possible or not from the processed/ finished products. Still, we can make an attempt. However, it is an invasive procedure as we need to cut down one or two shawls into small pieces for DNA analysis. ZSI would seek a written consent/ permission through proper channels from the competent authorities for undertaking the said investigation. Until, we receive formal permission through a letter addressed to DZSI, we won't be able to start the investigation procedure. However, morphological analysis can be expedited.”

7. The petitioner, since was not satisfied with the aforesaid, has approached the respondent seeking against re-testing of the sample after he was served with the notice in the said proceedings by the authority.



8. The request of the petitioner, since was turned down, same has prompted the petitioner to approach this Court seeking quashing of the Show-Cause Notice dated 25th January, 2024, and the order dated 24th February, 2026, declining the petitioner's request for re-testing dated 15th April, 2025.

9. It is the case of the petitioner that in the interest of compliance with Principles of Natural Justice, it is necessary that the re-testing, as sought by the petitioner for the third time should have been permitted in the light of the procedure as laid down in the Public Notice No. 97/2017 dated 28th July, 2017.

10. According to him, when the rules itself provides for the re-testing to be done in the case like, the one in hand, the petitioner ought not have been denied an opportunity of re-testing.

11. In addition to the above, the petitioner has sought support from the judgment of the Allahabad High Court in the matter of "*Katyal Industries vs. Union of India*", 2017 (346) E.L.T. 218 (All.), *Writ Tax No. 8 of 2012* decided on 24.01.2012, so as to claim that in a similar set of facts and circumstances, the grant of re-testing was quite justified.

12. Furthermore, our attention is also invited to the order dated 28th April, 2023, passed by the Division Bench of this Court in a similar matter arising out of very same issue, being W.P.(C) 4570/2023 and 4602/2023.

13. As such, the contention of the learned counsel for the petitioner is that in compliance with the directives of the respondent as reflected in the Notification/Public Notice referred to above, the third testing is required to be granted.

14. As against the above, the learned counsel appearing for the



respondent, i.e., Union of India, claims that the re-testing, once already granted at the behest of the petitioner, cannot be re-allowed unless there is a satisfaction to that effect recorded by the authority who is deciding the case in hand.

15. According to him, the claim in the petition is premature.

16. He would further claim that the petitioner has approached this Court at belated stage.

17. Having appreciated the respective submissions, it is apparent that the first test report was of 19th August, 2021. It was for the petitioner to apply for re-testing within a period of three months. However, it appears that even at a belated stage, the request of the petitioner for re-testing was granted, and the report that was received, was inconclusive.

18. In such an eventuality, the circular dated 28th July, 2017, issued by the respondent Customs authorities, provides for re-testing in case, if the authority, who is dealing with the issue is satisfied that there needs to be second re-test.

19. Reliance can be placed on Clause (f) of the Notification dated 28th July, 2017, which reads thus:

“f) The competent authority will consider the results of the re-test without prejudice to the results of the first test. In case there is a variation in the results of the first test and the re-test, the competent authority will take the decision relying upon either of the tests specifying the grounds in writing for the decision so taken. In case the competent authority is unable to decide whether to rely upon the first or the re-test results, then it may order a second re-test provided the consignment is still within the customs control. However, this option will not be resorted to in every case of variation between the first test and re-test results.”

20. The fact remains that the petitioner intend to have the third testing report, as he is expecting that the third testing report might come in his



favour.

21. Even if such report is there, the report by itself cannot be accepted to be a final proof in the matter of concluding that, the shawls were not made out from a material which is otherwise banned item. In our opinion, it is for the adjudicating authority to appreciate the test reports and accept the test report with which it is convinced of.

22. The fact remains that there are already two test reports on record and the circular vests discretion with the authority to call for the third test report at an appropriate stage.

23. In our opinion, the said position is yet to arrive in the matter, as the petitioner is not permitting the respondent authority to proceed with the matter and has approached this Court with a request to direct the re-testing for the third time, which otherwise cannot be done at the mere instance of the petitioner.

24. Apart from above, the fact remains that the second test report is of 2022, whereas for the third time the petitioner is seeking again re-test in 2025. For all these three years, there was no effort on the part of the petitioner to get the proceedings decided either way. Rather, the application in our opinion, as rightly so pointed out by the learned counsel for the respondent, appears to have been moved with an intention to delay the proceedings.

25. In that view of the matter, we are of the view that no case for exercise of extraordinary jurisdiction is made out.

26. Accordingly, the petition stands dismissed. However, this will not preclude the authority from looking into the case of the petitioner as to whether the facts and circumstances of the case requires a third testing in



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view of the procedure laid down in the circular dated 28th July, 2017.

**NITIN WASUDEO SAMBRE, J
(JUDGE)**

**AJAY DIGPAUL, J
(JUDGE)**

APRIL 16, 2026/DM/ST