Customs safeguard the interest of Ferrero SpA in Parallel Import

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Quick and decisive actions of officials at the Customs Office, Pune, achieved a major success for Ferrero SpA (hereinafter Right Holder or Ferrero) in a case of parallel importation. In an unprecedented development, a third-party importer of foreign goods, not earmarked for sale in India by the manufacturer, was made to shoulder responsibility for their import. Prime Fabzone Pvt. Ltd. (Importer) had imported Ferrero products in India which were not in compliance with the applicable Indian laws, that is the Legal Metrology Act and the Food Safety and Standards Authority of India (FSSAI). However, the goods did not violate the intellectual property rights of the Right Holder as these appeared to be original. Ferrero raised its serious concerns about the imported products with the Customs because these did not comply with the applicable laws in India which would cause the Indian regulatory authorities to hold the Right Holder liable for any irregularity or breach arising out of the sale of Ferrero products notwithstanding that these were obtained through parallel imports. In order to safeguard the interests of Ferrero, the Pune Customs office obtained an undertaking from the Importer in the form of an indemnity bond to the Customs stating that the Importer shall indemnify the Right Holder for any financial and legal liability arising out of the said parallel importation of Ferrero products. This is an unprecedented instance of an importer undertaking to bear liability arising from parallel imports of a right holder's products into India. The outcome is of importance for overseas manufacturers who run the risk of regulatory non-compliance and legal liability for goods which they neither imported nor intended to sell in India.

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