HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

<u>Writ Petition No.35410 of 2016</u>

<u>Order</u>: (per V.Ramasubramanian, J.)

The petitioner who imported gold jewellery from Indonesia under a Bill of Entry dated 20-10-2015, with a claim for preferential tariff by virtue of ASEAN-India Free Trade Area Preferential Tariff Certificate of Origin, but whose goods were detained, has come up with the above writ petition seeking a *mandamus* to direct the respondents to release the gold, as per the order of the 1st Appellate Authority.

2. Heard Mr. Sudhakar Reddy Challa, learned counsel appearing for the petitioner and Mr. B.Narasimha Sarma, learned Senior Standing Counsel for the Department.

3. Sans unnecessary details, it may be pointed out that by an Order-in-Original dated 13-11-2015, the Adjudicating Authority denied the claim of preferential tariff duty for the gold jewellery imported by the petitioner and demanded duty at the rate of 15% BCD, 2% ED and 1% SHE Education Cess on the BCD and SAD at 1%.

4. The petitioner carried the Order-in-Original to the Commissioner (Appeals). The appeal was allowed by an order dated 06-5-2016, holding that the petitioner is eligible for preferential rate of duty in terms of Notification No.46/2011-CUS, dated 01-6-2011. As a consequence, the petitioner is

entitled to have the gold jewellery seized from him, released. But the respondents did not release the gold jewellery. Therefore, the petitioner has come up with the above writ petition.

5. The main contention of the petitioner is that as on date, the order of the Appellate Authority dated 06-5-2016, has neither been stayed nor been set aside by any superior forum and that therefore the respondents cannot protract the issue of release of the gold.

6. But the stand taken by the Department in the counter affidavit is that as against the order of the Appellate Authority, a decision has been taken by the Competent Committee to file a further appeal before the CESTAT and that an appeal has in fact been filed on 04-8-2016, within the period of limitation stipulated by the Act. Since the appeal is pending from 04-8-2016, the respondents claim that the gold jewellery cannot be released.

7. But unfortunately for the respondents, the order of the Appellate Authority has not been stayed by the Tribunal. Moreover the goods are not prohibited goods, so as to deprive the petitioner of at least a provisional release of the goods.

8. As a matter of fact, we had an occasion to consider the case of an importer who also imported gold from the very same Indonesian Company and claimed the benefit of concessional rate of duty under an agreement signed on 13-8-2009 by and between the Republic of India and the

Association of South-East Asian Nations. This agreement is known as "Trade in Goods under the Framework Agreement on the Comprehensive Economic Cooperation". But unfortunately, despite the subsistence of the agreement, the authorities have subjected all the gold imported by all importers from Indonesia to some scrutiny. It appears that the authorities first made verification with the Indonesian Company from which the importers purchased the gold. After the Company confirmed not only the factum of their export but also the source of procurement, the authorities again sent a team of officials to go to Indonesia to have a physical verification. Therefore, we pointed out in our order dated 30-8-2016 passed in W.P.M.P.No.17936 of 2016 in W.P.No.14394 of 2016 that no relationship, be it economic or domestic, can survive on suspicion for a long time. Therefore, we ordered the provisional release of the goods. In the case on hand, the petitioner has actually succeeded before the 1st Appellate Authority. Therefore, the refusal of the respondents to release the goods in the absence of any stay order from the CESTAT, is unreasonable.

9. Therefore, the writ petition is allowed directing the respondents to release the goods provisionally, on condition that the petitioner pays 30% of the duty demanded under the provisional assessment order and also furnishing a surety bond for the remaining amount to the satisfaction of the Custom Authorities. However, the release shall be subject to

the final outcome of the appeal filed by the Department before the CESTAT. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

G.SHYAM PRASAD, J.

15th December, 2016.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition No.35410 of 2016
(per VRS, J.)

15th December, 2016.
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