IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 06.11.2023
Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.30409 of 2023
and
W.M.P.No.30013 of 2023

M/s.Precious Metals Refiners Private Limited,
rep. by its Director Mr.Prashant ...Petitioner

VS.

1. The Principal Commissioner of Customs,
Chennai-VII, Air Cargo Complex,
Meenambakkam, Chennai-600 027.

2. The Deputy Commissioner of Customs (SIIB),
Air Cargo Complex,
Meenambakkam, Chennai-600 027.

3. The Assistant Commissioner of Customs (Import-Shed),
Air Cargo Complex, New Custom House,
Meenambakkam, Chennai-600 027.

4. The Additional Director General,
Directorate of Revenue Intelligence,
No.27,G.N.Chetty Road, T.Nagar,
Chennai-600 017. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking for a Writ of Mandamus to direct the respondents herein to release the goods, viz., 3 Packages, 79 Kilos, 9 Bars totally weighing 71,812.09

grams of Gold Dore Bars of Guinea imported vide Bill of Entry No.7993485, dated 25.09.2023, by extending the Benefit of Sl.No. 1 of Customs Notification No.96/2008-Customs, dated 13.08.2008 and also AIDC Notification No.011/2021-Cus., dated 01.02.2021 by accepting the Country of Origin Certificate Reference No.065-65 AGUIPEX/2023, dated 22.09.2023 issued by Government of Guinea under Duty Free Tariff Preference Scheme for Least Developed Countries (Combined Declaration and Certificate).

For Petitioner	:	Mr.A.K.Jayaraj
For Respondents 1-3	:	Mrs.R.Hemalatha Senior Standing Counsel
For Respondent-4	:	Mr.V.Sundareshwaran, Senior Standing Counsel

ORDER

This prayer in this Writ Petition is for issuance of mandamus to the respondents herein to release the goods, viz. Gold Dore Bars of Guinea imported vide Bill of Entry No.7993485, dated 25.09.2023, by extending the Benefit of Sl.No. 1 of Customs Notification No.96/2008-Customs, dated 13.08.2008 and also AIDC Notification No.011/2021-Cus., dated 01.02.2021 by accepting the Country of Origin Certificate Reference No.065-65 AGUIPEX/2023, dated 22.09.2023 issued by Government of Guinea under Duty Free Tariff Preference Scheme for Least Developed

Countries (Combined Declaration and Certificate).

2. The case of the petitioner in short is as follows:-

i) The petitioner herein is a Private Limited Company and registered under the Companies Act, 1956. The object of the petitioner-Company is to carry on the business of refining the Gold out of Gold Dore after importing Gold from Gold producing GEA Countries as per the terms of the License issued by the Directorate General of Foreign Trade (in short, DGFT), Ministry of Commerce and Industry.

ii) The petitioner has imported gold weighing 71,812.09 of Gold Dore Bars at USD 4,324,306.59 which were supplied by M/s.JSK Jewellery LLC, Dubai, vide Invoice No.JSK/DE/2023/236, dated 22.09.2023 and filed Bill of Entry No.7993485 dated 25.09.2023 and claimed the clearance of the goods for Home Consumption. The petitioner had also filed Airway Bill No.176/5928 4820, dated 22.09.2023 and also declared the above goods as classifiable under 71081200 and the origin of the said goods as Guinea.

iii) The Ministry of Commerce viz., DGFT after perusing all the documents and after proper inspection and perusing the documents viz., NABL Certificate, NOC from Pollution Control Board, has issued Import - Export License vide License No.0111003811, dated 04.05.2022, for import of Gold Dore Bars up to 95% purity for a quantity of 10.0 MTS., and from all GEA Countries.

iv) As per the above license issued by the Ministry of Commerce, DGFT, New Delhi, the petitioner had imported the above goods viz., Gold Dore Bars and subsequently, by letter dated 04.10.2023, the petitioner had requested the respondents herein to release the goods provisionally under Section 110 A of the Customs Act. However, the respondents, without taking into consideration the Country of origin Certificate issued by the Ministry of Guinea and other related documents produced by the petitioner as regards the proof of Origin of the Goods, withheld the clearance of the goods imported by the petitioner. Hence, the petitioner has come forward with the present Writ Petition, seeking release of the goods.

3. Mr.A.K.Jayaraj, the learned counsel for the petitioner, Mrs.R.Hemalatha, learned Senior Standing Counsel for respondents 1-3 and Mr.V.Sundareshwaran, learned Senior Standing Counsel for respondent No.4 argued at length and during the course of arguments, the learned counsel for the petitioner has putforth a suggestion that, since the petitioner is suffering towards heavy airport warehouse charges and drastic fall in the market price of gold, the petitioner is ready to furnish bank guarantee or in the alternative, agreed to pay 100% duty under protest, provided the respondents, pending adjudication proceedings may order for release of the detained goods forthwith. The learned counsel for the petitioner also insisted upon this Court to issue a direction to complete the adjudication proceedings in a time bound manner.

4. On the other hand, learned Senior Standing Counsel for the respondents submitted that since the petitioner imported the goods (viz., Gold) from some other Country and not from Guinea, the respondents have rightly detained the goods and hence, the petitioner is not entitled to seek exemption. However, with regard to the suggestion putforth by the petitioner, the learned Standing Counsel have raised no objection for such course being adopted.

5. In the light of above facts and circumstances of the case and taking into consideration of the suggestion putforth by the learned counsel for the petitioner, this Court is of the view that, it need not labour much to resolve the controversy raised in the Writ Petitions inasmuch as the petitioner has come forward to pay 100% duty under protest.

6. Thus, this Court, without going into the merits of the contentions raised herein, is inclined to issue the following direction:-

i) The Authority concerned is directed to consider the petitioner's request and release the goods subject to payment of 100% duty by the petitioner within a week's time from the date of payment of 100% duty made by the petitioner in accordance with law.

ii) The petitioner, after making the payment of 100% duty, is at liberty to make an appropriate application seeking release of the goods, which shall be considered by the Authority concerned.

iii) The respondents are also directed to adjudicate the matter relating to the issue of exemption of duty for import of gold by the petitioner in accordance with law after affording an ample opportunities to the petitioner, as expeditiously as possible, preferably, within a period of three months from the date of receipt of a copy of this order.

7. With the above direction, this Writ Petition is disposed of . No costs. Consequently, connected Writ Miscellaneous Petition is closed.

06.11.2023

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Index : yes/no
Note Issue order copy on 08.11.2023.
To

1. The Principal Commissioner of Customs,
Chennai-VII, Air Cargo Complex,
Meenambakkam, Chennai-600 027.

2. The Deputy Commissioner of Customs (SIIB),
Air Cargo Complex,
Meenambakkam, Chennai-600 027.

3. The Assistant Commissioner of Customs (Import-Shed),
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4. The Additional Director General,
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No.27,G.N.Chetty Road, T.Nagar,Chennai-600 017

Krishnan Ramasamy,J..

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