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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3464 OF 2023

Shubhlaxmi Jewellery

... Petitioner

Versus

Directorate of Revenue Intelligence
& Others

...Respondents

Mr. Ketan Dhaval i/b. Abhishek Pedenkar, for the Petitioner.

Mr. Advait Sethna with Mr. Sandeep Raman i/b. Raju Thzkkar, for
Respondent Nos. 1 & 2- DRI.

Mr. Karan Adik with Smt. Maya Majumdar, for Respondent Nos. 3 & 4.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 30th JANUARY, 2024

ORAL JUDGEMENT (Per FIRDOSH P. POONIWALLA, J.):

RULE. Rule made returnable forthwith and heard finally by
consent of the parties.

2 This Petition filed under Article 226 of the Constitution of India,
seeks the following final reliefs:-

“(a):- That this Hon’ble Court be pleased to issue writ of certiorari or any other writ in the nature of certiorari and quash and set aside the impugned Show Cause Notice dated 12/12/2019 bearing No. DRI/MZU/C/Int-102/2019 and impugned Order-in-Original dated 13/1/2023 in DRI/MZU/C/INT-102/2019, so far as it relates to the subject property of the Petitioner;

(b) This this Hon’ble Court be pleased to issue writ of mandamus or any other writ in the nature of mandamus and direct the Respondent Nos. 1 to issue Show Cause Notice as per Section 124 of the Customs Act, 1962 and grant personal hearing to the Petitioner with respect to confiscation of subject property i.e. 490.95 gms of Gold taken from the custody of Respondent No.5 on 14/06/2019 at M/s. Concor Air Limited Ville Parle (East).”

3 The Petitioner is a jeweller who conducts business in multiple cities in India. It is the case of the Petitioner that it is the owner of 490.95 grams of gold (“the said gold”).

4 It is further the case of the Petitioner that it had approached Respondent No.5, which is an entity engaged in the Logistics Business, for the purpose of sending the said gold to one M/s. Prabhat Subhash Ghosh on job work basis. It is the case of the Petitioner that it had entrusted the said gold on 13th June, 2019, with Docket No. 22190, to Respondent No.5, along with necessary documents, to take the said gold from Chennai to Mumbai.

5 Further, the Petitioner states that it is the case of the Respondents that they had received information that seven logistic companies were clearing jewellery items through domestic air cargo, in which smuggling of foreign marked gold bars was taking place. The Petitioner states that it is the case of the Respondents that, after getting the said goods cleared from Concor Air Limited, the said logistic companies delivered the foreign marked gold bars to different persons/ jewellers in Mumbai. On receipt of the said information, the DRI arrived at Concor Air Limited on 14th June, 2019, examined the parcels and detained gold bars of 32.380 kgs. It is the case of the Petitioner that the said 32.380 kgs of gold detained included the said gold owned by the Petitioner. It is the case of the Petitioner that Respondent Nos.1 and 2 have wrongly added Respondent No.6 as the owner of the said gold in the Panchnama. It is the case of the Petitioner that Respondent No.6 is a Logistics Company, but the Petitioner had neither handed over the consignment of the said gold to Respondent No.6 nor had the Petitioner taken the service of Respondent No.6 in respect of the said gold at any stage.

6 Further, it is the case of the Petitioner that it claimed the said gold from Respondent Nos. 1 & 2. However, the claim of the Petitioner was not considered by Respondent Nos. 1 & 2.

7 Thereafter, Respondent No.1 issued a Show Cause Notice dated 12th December, 2019, under Section 124 of the Customs Act, 1962 , *inter alia*, for confiscation of 32.380 kgs of gold from Concor Air Limited on the allegation that they were smuggled goods. The said 32.380 kgs of gold included the said gold of the Petitioner. The said Show Cause Notice was not issued to the Petitioner. Further, the said Show Cause Notice did not consider the e-mail issued by the Petitioner informing Respondent Nos. 1 & 2 that it was the owner of the said gold.

8 The Petitioner addressed a letter dated 21st June, 2019 to Respondent No.1 wherein the Petitioner stated that it had sent the said gold for making of ornaments to Prabhat Subhash Ghosh, on job work basis, through Respondent No.5. The Petitioner informed that the said gold was owned by the Petitioner and not by Respondent No.5, who was merely acting as an agent of the Petitioner for delivering the said gold. The Petitioner did not receive any response to the said letter.

9 It is the case of the Petitioner that Respondent No.5 also made a disclosure that it was not the owner of the said gold and that they were merely transporting the same.

10. It is the case of the Petitioner that the Respondents did not consider the representations of the Petitioner and Respondent No.3 passed an Order-in-Original dated 13th January, 2023, confiscating the said 32.380 kgs of gold and imposing penalties. The said Order also records that many persons had addressed letters claiming the seized gold. The said Order further records that the said parties had claimed ownership of the seized gold and had

submitted documents to substantiate their claims. Since establishing the claim of ownership or rejecting the same was in the domain of investigation, Respondent No.3, as an adjudicating authority, having no jurisdiction to initiate an investigation into the said claims, was refraining from passing any observation or order or imposing any penalty on the said parties. The said Order also records that the aforesaid parties may take their cases to the appropriate forum. The Order further records that the same was passed without prejudice to any action which may be taken against the said persons under the said Customs Act, 1962 or under any other statute.

11 By a letter dated 11th April 2023 addressed on behalf of the Petitioner to Respondent No.3, it was stated that the Petitioner's claim to ownership was not considered by the said Order dated 13th January 2023. It was requested that, on account of the same, the said Order dated 13th January 2023 ought to be amended so that the Petitioner could claim its gold. The said request was rejected by Respondent No.3 by its letter dated 18th April 2023.

12 From the aforesaid factual narration, it is clear that representations made by the Petitioner, claiming ownership of the said gold and seeking release of the same, have not been considered by the Respondents.

13 Mr. Dhaval, the learned Counsel for the Petitioner, states that the Petitioner is only seeking that the said representations made by the Petitioner may be considered and decided by the Respondents.

14 In our view, the request made by the learned Counsel for the Petitioner is reasonable and, therefore, Respondent Nos. 1 & 2 would have to be directed to decide the representations made by the Petitioner within a

period of six months from the date of intimation of this Order, without being influenced by the Order-in-Original dated 13th January, 2023.

15 Further, we are of the view that, as requested by the learned Counsel for the Petitioner, till a decision is taken in respect of the representations of the Petitioner, status-quo should be maintained in respect of the said gold. Further, we are also of the view that, in the event of the Petitioner succeeding in proving its case, the Respondents will have to be directed to restore to the Petitioner the said gold or equivalent amount of gold or to compensate the Petitioner by making payment of an amount equivalent to the market value of the said gold as on date.

16 For the aforesaid reasons, we hereby pass the following orders:-

- (a) Respondent No.3 is directed to consider the representations made by the Petitioner by letters dated 21st June, 2019 and 11th April, 2023 and take a decision in respect of the same within a period of six months from the date of intimation of this Order, after giving a personal hearing to the Petitioner, and without being influenced by the Order-in-Original dated 13th January, 2023;
- (b) Till Respondent No.3 takes a decision on the aforesaid representations made by the Petitioner, status-quo be maintained in respect of the said gold claimed by the Petitioner;
- (c) In the event of the Petitioner succeeding, the Respondents are directed to return the said gold to the Petitioner or to restore to the Petitioner an amount of gold equivalent thereto or to compensate the Petitioner by making payment equivalent to market value of the said gold as on date.
- (d) Rule is made absolute in the aforesaid terms.

(e) Petition is disposed of. No order as to costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI , J.)