S.R.JOSHI

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

WRIT PETITION NO. 3036 OF 2023

M/s. Shivraj Laxmichand Jain Jewellers … 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 Thakkar, 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 Exhibit F bearing No. DRI/MZU/C/Int-102/2019 and impugned Order-in-Original dated 13/1/2023 Exhibit J 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 & 2 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. 511.60 gms of Gold taken from the custody of M/s. Marudhar Express Service Pvt. Ltd. on 14/06/2019 at M/s. Concor Air Limited Ville Parle (East)."*

This order is modified as per order dated 8th March, 2024.

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 511.60 grams of gold ("the said gold"), which has been purchased by it. It is also the case of the Petitioner that the said gold has an Indian mark i.e. MMTC marked 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. Manak Jewellers Private Limited 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. 801245, to Respondent No.5 along with necessary documents to take the said gold from Hyderabad 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.

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 19th June, 2019 to Respondent No.2 wherein the Petitioner stated that it had sent the said gold for making of ornaments to Manak Jewellers Private Limited, Mumbai, 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 The Petitioner addressed a letter dated 13th September, 2019 to Respondent No.1 once again claiming the said gold. The Petitioner did not receive any response to the said letter.

10 Further, the Petitioner addressed a letter dated 19th December, 2019 to Respondent No.1, stating its case and asking for release of the said gold. No response was received by the Petitioner to the said letter also.

11 Subsequently, the Petitioner addressed another letter dated 3rd January, 2020 to Respondent No.1 again seeking release of the said gold. Again no response was received by the Petitioner.

12 Thereafter, the Petitioner, through its Advocate, addressed a letter/ representation dated 24th October, 2020 to Respondent No.3. By the said letter, the Petitioner pointed out that, despite being the owner of the said gold, it had not received any Show Cause Notice nor any intimation of hearing in

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the matter. By the said letter, the Petitioner also gave a detailed explanation about the key events in respect of the said gold.

13 Since, despite the aforesaid letters, the Respondents ignored the submissions of the Petitioner, the Petitioner addressed a letter dated 8th September, 2021, through its Advocate, to Respondent No.3, seeking a personal hearing.

14 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, including the Petitioner, 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.

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

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16 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.

17 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.

18 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.

19 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 its letters dated 19th June, 2019, 13th September, 2019, 19th December, 2019, 3rd January, 2020 and 24th October, 2020 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;

This order is modified as per order dated 8th March, 2024.

(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.)

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