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

WRIT PETITION (L) NO.25953 OF 2024

Equidem Enterprise Pvt. Ltd. ….Petitioner

V/s.

The Deputy Commissioner of Customs, Airport
Special Cargo Commissionarate Mumbai
Customs Zone-III & Ors. ...Respondents

Mr. Prakash Shah a/w Mr. Jas Sanghavi and Mr. Suyog Bhave i/by PDS Legal for petitioner.

Mr. Siddharth Chandrashekhar a/w Ms. Sangeeta Yadav for respondents.

CORAM : K.R. SHRIRAM &
JITENDRA JAIN, JJ.
DATE : 19th SEPTEMBER 2024

P.C. :

1 Petitioner has filed the present petition challenging the decision contained in communication dated 14th August 2024 issued by respondent no.1 to the extent it imposes a condition of furnishing bank guarantee to the extent of 10% of the value of Platinum Ingots imported by petitioner and covered under 19 bills of entry filed between 9th July 2024 to 12th July 2024, while granting the permission for re-export of the said Platinum Ingots.

2 In the affidavit in reply filed through one Sruti Vijayakumar affirmed on 16th September 2024, it is respondent's case that for consignments covered by 19 bills of entry are concerned, the following conditions are to be fulfilled :-

(a) An alloy containing 2% or more, by weight, of platinum is to be treated as an alloy of platinum.

(b) Origin Criteria under Product Specific Rule i.e. Customs Tariff Sub-heading (CTSH) and 3% Value addition for non-originating goods should be met.

3 Respondent has thereafter, proceeded to discuss the extent of compliance with the conditions in paragraphs 8, 9, 11 and 12 of the said affidavit of Sruti Vijayakumar. Said paragraphs read as under : -

> *"8. The final test results have indicated that the goods imported by the Petitioner are Platinum Alloy as the percentage of Platinum in the alloy is more than the required minimum of 2%. Therefore, in so far as the description of the goods is concerned there is no objection. Since, the petitioner has availed benefits of exemption of duty under CEPA Notification No. 22/2022 dated 30.04.2022, the Competent Authority decided to simultaneously verify the COO Certificates and fulfillment of origin criteria as enumerated in Para 9(b) above.*
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> *9. The Origin Criteria mentioned in the Certificate of origin submitted by the Petitioner is 'PSR' which stands for Product Specific Rule. The imported goods fall under Tariff Head 711011. The PSR for this heading is CTSH+3% Value Addition 'CTSH' requires that the raw materials shall undergo change in classification at the sub-heading level once the finished goods are manufactured. In addition to this change there should also be a value addition of 3%. That the raw materials used are unwrought gold (CTH 710812), Platinum scrap (CTH 711319) and unwrought copper (CTH740319). The CTH of final export product is 711011. Therefore, since there is a change at the CTH level in the final product, the goods imported*

> *by the Petitioner meet the CTSH criteria. The criteria of value addition is also required to be fulfilled.*
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> *11. The process described in the documents submitted by the Petitioner themselves shows that the process of manufacture of the imported Platinum Alloy was as simple as simple melting together of three different metals and casting them in the form of ingots. There is no other process applied than simple melting together. Therefore, the value addition of 3% shown to have been achieved appeared very high. It would be easy to appreciate if the same is demonstrated in absolute terms. In Bill of Entry No. 4431079 dated 10.07.2024 the Petitioner has imported 112 kg Platinum alloy valued at Rs 67.15 crores. Considering the fact that Rs 67.15 crores is inclusive of value addition of 3%, the total value addition (cost of melting and labour etc) works out to R$ 1.96 crores. This further works out to Rs 1, 75,000/- per kg. In other words, the cost of simple melting together of a total one kg of three different metals is claimed to be Rs 1,75,000/-.*
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> *12. The Petitioner has admitted that upon import of the Platinum Alloy, they would take it to their refinery and melt it again and segregate platinum and gold. The moot point is whether at the time of reverse engineering are they incurring a similar cost or not. Therefore, in order to check the genuinity of the value addition claimed it was decided to cause verification of the details claimed in the Country of Origin Certificate.*"

4 Therefore, respondents do not seem to have any objection insofar as description of the goods is concerned. Respondents also do not seem to have any issue so far as it relates to change at CTH level in the final product. According to respondents, the goods imported meets the CTH criteria. The problem seems to be only as regards 3% value addition for non originating goods. It is respondents' case that the value addition of 3% shown to have been achieved appears to be very high and therefore, to check the genuinity of the value addition claim, department has decided to call for verification of the details claimed in the country of origin certificate.

5 Mr. Shah, on instructions, states that without prejudice to petitioner's rights and contentions, petitioner shall comply with the conditions placed in the impugned communication dated 14th August 2024. Mr. Shah states that a bond to the extent full value of the goods will be furnished by petitioner and in addition, a suitable bank guarantee to the extent of 10% of the value of the goods would also be submitted. Bank guarantee to be given shall be of a Scheduled Bank. Statement accepted as an undertaking to the Court. The wordings shall be in the format prescribed by the department. Bank guarantee shall be either one comprehensive bank guarantee or in such number as petitioner may consider it appropriate. The bank guarantee shall be valid initially upto 31st December 2024.

6 Upon furnishing the bank guarantee, respondents shall forthwith permit re-export of the Platinum Ingots to the extent of value of bank guarantee given covered under 19 bills of entry filed by petitioner.

7 Respondents are directed to complete the verification/ investigation at the earliest on or before 31st October 2024.

8 At this stage, Mr. Chandrashekhar states that respondents have addressed a communication to the Director International Customs Division (ICD) dated 13th August 2024 for verification of the origin certificate to which there is no reply. To a query asked, Mr. Chadrashekhar stated that there is not even an acknowledgment.

9 The Director, ICD is directed to forthwith attend to the communication received by him from the Commissioner of Customs, Airport Special Cargo Commissionate and verify the origin certificate so that investigation is completed by 31st October 2024 as directed by us.

10 If the report is not adverse to petitioner, respondents shall within a week of receiving a request from petitioner, cancel and return the bank guarantee.

11 If the report is adverse to petitioner, petitioner shall renew the bank guarantee for a period of one year and in any case, until the completion of adjudication proceedings.

12 All rights and contentions are kept open.

13 We clarify we have not made any observation on merits of the matter.

14 Petition disposed.

(JITENDRA JAIN, J.) **(K.R. SHRIRAM, J.)**