IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **12.01.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition Nos.34239 & 34246 of 2023
and W.M.P.Nos.34123 & 34134 of 2023

In both WPs.

M/s.Yash Oro India Private Limited,
Represented by its Director Mr.Ritesh Naredi,
Survey Nos.1939, 1940,
Nandigama Village, Nandigama Mandal,
Ranga Reddy, Telangana-509 228. ... 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,
Noida Regional Unit, Ground floor & First floor,
G-10, Sector-63, Noida, U.P.-201 301.

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

Prayer in W.P.No.34239 of 2023: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Mandamus directing the respondents to release the goods viz., 1 box with 3 bars, totally weighing 17,096.20 grams of gold dore bars of Tanzanian origin imported vide Bill of Entry No.8131443, dated 04.10.2023, 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.28911, dated 02.10.2023 issued by Government of Tanzania under Duty Free Tariff Preference Scheme for Least Developed Countries (Combined Declaration and Certificate) and further directing the respondents to issue Waiver Certificate for Airport Ware House Charges under Regulation of Handling of Cargo in Customs Area Regulations, 2009.

Prayer in W.P.No.34246 of 2023: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Mandamus directing the respondents to release the goods viz., 1 box with 3 bars, totally weighing 17,091.50 grams of gold dore bars of Tanzanian origin imported vide Bill of Entry No.8131051, dated 04.10.2023 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.28910, dated 02.10.2023 issued by Government of Tanzania under Duty Free Tariff Preference Scheme for Least Developed Countries (Combined Declaration and Certificate) and further directing the respondents to issue Waiver Certificate for Airport Ware House Charges under Regulation of Handling of Cargo in Customs Area Regulations, 2009.

In both WPs.

For Petitioner : Mr.A.K.Jayaraj

For RR1 to 3 : Mr.K.Mohana Murali
Senior Standing Counsel

For RR4 & 5 : Mr.V.Sundareswaran
Senior Standing Counsel

COMMON ORDER

By these writ petitions, the petitioner seeks release of Gold Dore Bars of alleged Tanzanian origin imported under bills of entry Nos.8131051 and 8131443 both dated 04.10.2023.

2. The petitioner asserts that it is engaged in the business of importing gold dore and refining gold. The petitioner further asserts that it obtained a licence from the Directorate General of Foreign Trade for the import of gold dore subject to conditions. According to the petitioner, the conditions are that the petitioner should be the actual user and that the petitioner should comply with the requirements of condition Nos.09 and 40 of Notification No.50 dated 30.06.2017, which was issued under Section 25 of the Customs Act, 1962 (the Customs Act). The petitioner claims that it complied with the above mentioned conditions. In spite of fulfilling such conditions, it is stated that the goods were seized. These writ petitions were filed in the above facts and circumstances.

3. Learned counsel for the petitioner submits that the petitioner is entitled to provisional release of the goods under Section 110A of the

Customs Act. By relying on the earlier order of this Court in W.P.No.30383 of 2023, order dated 06.11.2023, learned counsel submits that the petitioner be permitted to obtain provisional release of the goods. He further contends that such provisional release may be ordered subject to payment of 50% duty.

4. The above contentions are refuted by Mr.V.Sundareswaran, learned Senior Standing Counsel for respondents 4 & 5. Mr.V.Sundareswaran submits that the goods imported by the petitioner are prohibited goods under Section 2(33) of the Customs Act read with Section 11 thereof. He also relies upon the Foreign Trade (Development and Regulation Act), 1992 (the FTDR Act), particularly Section 3(2) and (3) thereof. Learned counsel submits that the goods imported by the petitioner are classified as restricted goods under Notification No.49/2015-2020 dated 05.01.2022. As restricted goods, if the conditions imposed in relation to the import are violated, he submits that the goods would fall within the definition of prohibited goods in Section 2(33) of the Customs Act. Mr.V.Sundareswaran places reliance on the judgment of the Division Bench of the Delhi High Court dated

21.08.2023 in W.P.(C) No.8902 of 2021, Nidhi Kapoor v. Principal Commissioner and Additional Secretary to the Government of India and others to the effect that, if import conditions are violated, the goods may be treated as prohibited goods.

5. Upon consideration of the rival contentions, the first issue that falls for consideration is whether the goods are prohibited. Section 11(1) of the Customs Act empowers the Central Government to issue a notification in the Official Gazette to prohibit goods either absolutely or subject to specified conditions for any of the purposes set out in sub-section (2) of Section 11. In terms of Section 11, notifications were issued. The notifications issued under Section 11 do not prohibit the import of gold dore. Mr.V.Sundareswaran, however, referred to Notification No.49/2015-2020 dated 05.01.2022 and pointed out that the import of gold dore is restricted. Under sub-section (2) of Section 3 of the FTDR Act, the Central Government has the power to prohibit, restrict or otherwise regulate imported goods or services. Whether sub-section (3) of Section 3 would apply only to prohibited goods under sub-section (2) or also to restricted goods warrants consideration in an appropriate case. Because there is no notification under any statute

classifying the goods as prohibited, at a minimum, it may be concluded that there is an arguable case to contend that these goods are not prohibited goods.

6. Since the petitioner has at least an arguable case to contend that the goods are not prohibited goods, the next issue is whether and, if so, on what conditions, the petitioner may seek provisional release under Section 110A of the Customs Act. The petitioner relied upon the exemption notification and contended that duty exemption should be extended to the petitioner. In the counter affidavit, the respondents set out reasons as to why they dispute the authenticity of documents such as the packing list and the Assay Certificate provided by the petitioner. The genuineness and validity of these documents are required to be examined by the respondents in course of proceedings against the petitioner. At this juncture, I refrain from expressing any opinion on the genuineness or validity of the documents submitted by the petitioner.

7. Although discretion is vested in the adjudicating authority to decide an application for provisional release, in appropriate cases, such discretion

may also be exercised by this Court under Article 226 of the Constitution of India. In view of the conclusion in the preceding paragraph that the genuineness and validity of documents submitted by the petitioner in support of its exemption claim should be decided by the respondents, at this juncture, revenue interest should be protected. By taking into account both revenue interest and the fact that the import was made under a valid licence, I am inclined to direct provisional release on the following terms and conditions:

(i) The petitioner shall remit 100% of the duty payable on the value of the goods imported under each bill of entry. Such payment may be made under protest.

(ii) The petitioner shall submit a bond for a sum equal to the total value of the goods under each bill of entry.

(iii) Subject to fulfillment of the above conditions, goods may be provisionally released to the petitioner within a period of one week from the date of compliance with the above conditions.

(iv) It is open to the respondents to proceed with proceedings against the petitioner uninfluenced by any of the observations made in this order.

8. The writ petitions are disposed of on the above terms without any order as to costs. Consequently, connected Miscellaneous Petitions are closed.

12.01.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

Note:Issue order copy on 18.01.2024

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To

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Chennai-VII, Air Cargo Complex,
Meenambakkam, Chennai-600 027.

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

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SENTHILKUMAR RAMAMOORTHY,J

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4.The Additional Director General,
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By order dated 12.01.2024, these writ petitions were disposed of. The matter is listed today upon being mentioned. Learned counsel for the respondents submits that there are clerical errors in the order in as much as the name of Mr.V.Sundareswaran, learned senior standing counsel, should be mentioned as counsel for all the respondents and not only respondents 4 and 5. This submission is liable to be accepted. Therefore, the Registry is directed to re-issue the order by mentioning the name of Mr.V.Sundareswaran, learned senior standing counsel as learned counsel for respondents 1 to 5 on page no.3 and by consequently deleting the name of Mr.K.Mohana Murali, learned senior standing counsel, from page no.3. Likewise, line 2 of paragraph 4 of the order should be amended by replacing the numerals '4 and 5 with '1 to 5'.

24.01.2024

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SENTHILKUMAR RAMAMOORTHY,J

rna

<u>**W.P.Nos.34239 and 34246 of 2023**</u>

24.01.2024