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W.P(MD)No.15996 of 2024

THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 02.08.2024

Pronounced On : 12.08.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.15996 of 2024

and

W.M.P.(MD)Nos.13909, 13911 & 13912 of 2024

Malika

... Petitioner

Vs.

The Senior Director and Head,
Bureau of Indian Standards,
Ministry of Consumer Affairs,
Food and Public Distribution,
Madurai Branch Office:
SIDCO Centre of Excellence Building,
Women Industrial Park,
Kappalur, Thoppur,
Madurai-625 008.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the impugned order dated 07.06.2024 in SRO/CAN/MDBO/HM/C-6790073724 and quash the same as illegal and arbitrary.

For Petitioner : Mr.S.Srinivasa Raghavan
for Mr.P.Ganapathi Subramanian

For Respondent : Mr.K.Govindarajan
Deputy Solicitor General of India



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ORDER

Heard the learned counsel for the petitioner and the learned DSGI for the respondent.

2. The petitioner is engaged in jewellery business for the last 20 years. On 09.05.2024, the officials attached to the office of the respondents searched the petitioner's shop and found that the petitioner was in possession of the non-hallmarked jewelry. Jewellery weighing 91.50 grams was seized by the inspection team. On 07.06.2024, the impugned suspension order was issued. The petitioner was also given notice to offer her explanation as to why her the certificate of registration should not be cancelled.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

4. The learned DSGI appearing for the respondent submitted that the impugned order is well reasoned and its factual basis remain un-controverted. He called upon this Court to dismiss the writ petition.

5. I carefully considered the rival contentions and went through the materials on record.



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6. I sustain the stand of the learned DSGI that the petitioner was in possession of the non-hallmarked jewels. The Government of India had issued the notification dated 31.05.2023 in the following terms:-

“S.O.1555(E)- In exercise of the power conferred by sub-section (3) of Section 14 read with sub-sections (2) & (3) of Section 15, sub-Sections (1) & (2) of section 16, section 17 and sub-section (2) & (3) of section 25 of the Bureau of Indian Standards Act, 2016 (11 of 2016), the Central Government, after consulting the Bureau of Indian Standards, is of the opinion that it is necessary or expedient so to do in the public interest, hereby makes the following order, further to amend the Hallmarking of Gold Jewellery and Gold Artefacts Order, 2020 namely:-

1. (1) This order may be called the Hallmarking of Gold Jewellery and Gold Artefacts (Second Amendment) Order, 2023.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. In the Hallmarking of Gold Jewellery and Gold Artefacts, 2020 in clause 2, in sub-clause (2A), the following proviso shall be inserted, namely:-

“Provided that if any person, had already given a declaration as required by the Bureau under sub-section (4) of Section 18 of the Bureau of Indian Standards, Act, 2016 (11 of 2016) declaring his old stock of Gold jewellery or gold artefacts with old hallmarking as existed prior to 1st July 2021, such person shall be permitted to sell or display or offer to sell such declared stock of Gold jewellery or gold artefacts upto the 30th June 2023.””

7. The petitioner could not have kept the non-hallmarked jewelry post 30.06.2023. I therefore cannot interfere with the impugned order of suspension. At the same time, the petitioner deserves to be granted some relief. It is not as if the petitioner was in possession of spurious gold. The jewelry possessed by the petitioner did have BIS logo. It did not have what is known as HUID (Hallmark Unique Identification Digit). Technically, what the petitioner had done runs counter to what has been laid down in Bureau of Indian Standards Act, 2016 and the regulations framed thereunder.



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8. The learned counsel appearing for the petitioner drew my attention to the notification dated 23.06.2021 as per which the need to hallmark the jewelry is applicable only to 24 Districts of Tamil Nadu. The aforesaid requirement of hallmarking the jewelry is not applicable to districts such as Kanchipuram, Virudhunagar, Chengalpattu and Myladudurai. The violation committed by the petitioner is technical. I am inclined to show some indulgence to the petitioner. Section 33 of the Bureau of Indian Standards Act, 2016 provides for compounding of offence. Regulation 7(6) of BIS (Hallmarking) Regulations, 2018 states that in the case of compounding of offence, the certificate shall not be processed for cancellation. It is not the case of the respondent that the petitioner is a repeat offender. I therefore permit the petitioner to apply for compounding of offence before the respondent. On such application being filed, the offence shall be compounded on payment of necessary penalty. Once the offence is compounded and the penalty is also remitted by the petitioner, the seized jewellery shall be returned to the petitioner. The question of prosecuting will not arise thereafter. The entire exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.



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9. The Writ Petition is disposed of accordingly. No costs. Consequently,
connected miscellaneous petitions are closed.

12.08.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
rmi/skm

NOTE: Issue Order Copy on 17.10.2024



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G.R.SWAMINATHAN, J.

rmi/skm

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