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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 9503/2024, CM APPL. 38972/2024

MD OVERSEAS PRIVATE LIMITED .....Petitioner

Through: Mr. Kunal Kishore, Mr. Anukrit Gupta, Mr. Arbaaz Husain and Mr. Ganesh Kumar Reddy, Advocates.

versus

THE DIRECTOR GENERAL OF FOREIGN TRADE & ORS. .....Respondents

Through: Mr. Nishant Gautam, CGSC with Ms. Sanjana Mehrotra and Mr. Vinay Kaushik, Advocates for R-1.
Mr. Gibran Naushad, SSC for R-3.

\+ W.P.(C) 9504/2024, CM APPL. 38974/2024

GULAB IMPEX ENTERPRISES PVT. LTD. .....Petitioner

Through: Mr. Kunal Kishore, Mr. Anukrit Gupta, Mr. Arbaaz Husain and Mr. Ganesh Kumar Reddy, Advocates.

versus

DIRECTOR GENERAL OF FOREIGN TRADE & ORS. .....Respondents

Through: Mr. Gibran Naushad, SSC for R-3.
Mr. Asheesh Jain, CGSC with Mr. Gaurav Kumar and Ms. Pooja Bhardwaj, Advocate with Mr. Aakash Meena, GP for R-1, 2.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **06.09.2024**

1. The Petitioners are aggrieved by the allocation of Tariff Rate Quotas[1] for import of gold bullion under Comprehensive Economic Partnership Agreement between Government of India and Government of United Arab Emirates dated 18th February 2022,[2] for financial year 2024-25, wherein the Petitioner was allocated only 250 Kgs of gold bullion instead of 500 Kgs.

2. A brief background leading to the filing of the present petitions is as follows:

2.1. The Petitioners are regular importers of gold bullion and hold registration with India International Bullion Exchange IFSC Limited as a 'Qualified Jeweller'. In terms of India-UAE CEPA, specific tariff commitments were agreed upon wherein Government of India agreed to eliminate its custom duties to goods originating from the UAE. This included tariff concession of 1% to Indian gold importers and the allotment of quantity of gold bullion was prescribed for each year. Accordingly, Gold TRQ for the financial year 2024-25 was fixed as 160 tonnes.

2.2. Subsequently, the Foreign Trade Policy, 2023 was notified and in terms thereof, Respondent No. 1/Director General of Foreign Trade[3] released the Handbook of Procedures, 2023, on 01st April, 2023. Paragraph No. 2.92 of the said Handbook stipulates that the imports will be permitted

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[1] "TRQs"
[2] "India-UAE CEPA"
[3] "DGFT"

subject to procedure laid down in Appendix 2A, particularly Annexure IV of Appendix 2A which provides for the procedure for import of gold bullion in terms of India-UAE CEPA.

2.3. On 03rd May, 2023, Petitioners made an application for allocation of Gold TRQ and, on 02nd June, 2023, Respondent No. 1 allocated 465 Kgs of Gold TRQ to the Petitioners for FY 2023-24.

2.4. For the financial year 2024-25, on 24th February, 2024, Petitioners submitted their TRQ application seeking allotment of 10,000 Kgs of gold. The application clearly mentioned that out of 465 Kg allocated to the Petitioner for FY 2023-24, the Petitioner was able to consume/import 200 Kgs of gold.

2.5. Thereafter, Respondent No. 1, through Minutes of Meeting dated 15th April, 2024,[4] specified that applicants who had utilised less than 95% of their previous TRQ quantities were to be allocated 2.5 times of their previous TRQ imports. Since the Petitioners consumed 200 Kgs of gold TRQ out of 465 Kgs in FY 2023-24, they were entitled for a TRQ allocation of 2.5 times of 200 Kgs for FY 2024-25. However, despite being eligible, on 02nd May, 2024, Petitioners were informed that they are only authorized 250 Kgs towards their Gold TRQ application for FY 2024-25.

2.6. Aggrieved by the lesser allocation of only 250 Kgs by DGFT, Petitioners sent several representations to Respondent No. 2/ Additional DGFT apprising about the discrepancy and requesting for enhancement in the TRQ authorisation, but received no response. Subsequently, Petitioners sent a representation to DGFT but to no avail.

2.7. Hence, Petitioners seek directions to the DGFT to modify their Gold

TRQ authorization dated 02nd May, 2024 and the Minutes of Meeting dated 15th April, 2024 to the extent that the prescribed quantity of Gold TRQ as per the modalities mentioned in the said Minutes of Meeting is allocated to the Petitioners.

3. On 12th July, 2024, this Court directed the Respondents to decide Petitioners' representations and in compliance with the same, a decision has been rendered, which has been placed on record and reads as follows:

"Government of India
Ministry of Commerce and Industry
Department of Commerce
Directorate General of Foreign Trade
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Vanijya Bhawan, New Delhi
Dated: 13th August, 2024

To,
M.D. Overseas Pvt. Ltd.
43, Bahar Road, Bengali Market,
New Delhi 110001
Email: kanakexports@mdoverseas.com
Kind Attn: Satish Bansal - Director

Subject: TRQ License No. 0111016188 dated 02.05.2024 -Allocation lesser than the criteria decided in MoM dated 15.04.2024 - reg.

With respect to the letter dated 04.06.2024 from your good office regarding the subject matter and seeking amendment vide TRQ amendment application dated 07.05.2024 to revise the quantity to 500 Kgs, it is informed that TRQ allocation under License No. 0111016188 dated 02.05.2024 has been made in pursuance of the Bills of Entry records received in the DGFT Systems from Customs on the date of deciding the application.

2. It is further informed that TRQ allocation as per the available quantities under India UAE CEPA has been already made for FY 2024-25. Therefore it would be not be possible to accede to your request for the amendment of the TRQ allocation in License No. 0111016188 dated

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[4] Published on 30th May, 2024.

02.05.2024 for enhancement to 500 Kgs at this juncture.

3. It is advised that you may prefer to import based on the original TRQ allocation under authorisation No. 0111016188 dated 02.05.2024. Further, as provided in Paragraph 7 of the Minutes of the EFC Meeting dated 15.04.2024, the current allocation would be subject to review by the committee in October 2024. Based on the imports made till September 2024, the Committee may thereafter choose to revise the extant TRQ allocations.

This is issued with the approval of the Competent Authority.

Satya Raja Sekhar G
Deputy Director General of Foreign Trade
Email: satya.grandhi@gov.in"

4. According to the Respondents, the allocation could not be revised as on the date of deciding Petitioners' application, the bills of entry records received in the DGFT systems from the Indian Customs Department did not reflect that the Petitioners had imported the quantity allocated of 500 Kgs.

5. Counsel for the Petitioners, on the other hand, points out that Electronic Data Interchange System, clearly reflects the Petitioners' bills of entry and such data could easily be verified by DGFT. To support this contention, he relies upon the Certificate of Utilisation issued by Respondent No. 3/ Office of the Principal Commissioner of Customs, Air Cargo Complex, dated 07th March, 2024, which encloses therewith the utilisation report in respect of all advance EPCG authorisation, which reflects that against the authorisation for 465 Kgs, the Petitioner had imported 200 Kgs of quantity. Thus, this document clearly establishes that the Petitioners have imported 200 Kgs of Gold and therefore, the TRQs fixed by DGFT ought to be based in terms of Minutes of Meeting held on 15th April, 2024, of which paragraph No. 6 stipulates as under:

"6. The Committee decided to allocate the said TRQs based on the said

modalities:
i. Notwithstanding the subsequent conditionalities, the allocation shall be subject to a maximum of the quantity as applied.
ii. Applicants who had utilised more than 95% of their previous TRQ quantities shall be allocated 3 times their previous TRQ imports (as per Bills of Entry records received by DGFT)
iii. Applicants who had utilised less than 95% of their previous TRQ quantities shall be allocated 2.5 times their previous TRQ imports (as per Bills of Entry records received by DGFT)
iv. Notwithstanding conditionalities (i) and (ii), Qualified Jewellers as notified by IFSCA till March'2024 shall be allocated a minimum of 200 Kgs.
v. Applicants who are not QJs and have no prior imports shall be allocated 80 kgs."

[Emphasis supplied]

6. Additionally, counsel for the Petitioners has also placed reliance on a screenshot of DGFT portal, reflecting the bill of entry number of the imports made by the Petitioners. A copy of the same has been handed over across the board and is taken on record.

7. At this juncture, counsel for the Respondents, urges that that the TRQs allocation as per available quantities under India-UAE CEPA has already been made for FY 2024-25 and therefore, it not possible to accede to Petitioners' request for amendment of TRQ allocation dated 02nd May, 2024 for enhancement of 500 Kgs. The Petitioners' case can, however, be considered subject to review by the Committee which will review the TRQ allocation quota in October, 2024.

8. The Court has noted the facts and contentions of the parties.

9. It must be noted that the Handbook of Procedure published by DGFT in 2023 has clearly laid down an effective EDI system for maintaining bills of entries and applications for Gold TRQ allotment. The relevant portion of the said Handbook stipulates as under:

"(h) Message Exchange with Community partners

CBIC, CBDT, MCA and Banks are major community partners of DGFT for message exchange. An effective message exchange system is in place with various community partners which is as follows:

(i) API Message Exchange with CBIC for

(a) Importer Exporter Code Number
(b) Authorisations/ Scrips including of DFIA, AA, EPCG
(b) Shipping Bills and Bills of Entry
(d) RBI's EDPMS for Export Realisation details

(ii) API Message Exchange with CBDT for PAN related services
(iii) API Message Exchange with MCA for company related information
(iv) Message Exchange with Banks, PFMS & Bharat Kosh

(a) Application Fee
(b) electronic Bank Realisation Certificate (e-BRC) data

(v) API message exchange with M/o MSME for Udyam Registration."

10. In light of the above, it is evident that the denial of benefit of TRQ allocation is on account of Respondents' fault, and therefore, the impugned decision taken on the Petitioners' representation cannot sustain. The Petitioners have given an undertaking to Court that in case the Respondents were to give the requisite allocation in October, they are willing to make the imports of additional quantity of Gold.

11. In such circumstances, the impugned decision dated 02nd May, 2024 is set aside. Respondents No. 1 and 2 are directed to ensure that the Review Committee shall, at the time of considering Petitioners' application for allocation in October, 2024, determine their eligibility on the assumption that the Petitioners' allocation was for 500 Kg. The balance quantity of 250 Kgs, which the Petitioners was entitled to, shall also be considered by the Review Committee. This order shall only apply for the FY 2024-25.

12. With the above directions, the present petitions along with pending applications, if any, are disposed of.

SANJEEV NARULA, J

SEPTEMBER 6, 2024
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