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

Date of Decision: 21st January, 2025

+ **W.P.(C) 6218/2024 & CM APPL.25897/2024**

M/S OM GEMS AND JEWELLERY

.....Petitioner

Through: Mr. Kishore Kunal, Ms. Runjhun Pare,
& Mr. Jayesh Sitlani, Advs. (M:
9425901526)

versus

DEPUTY COMMISSIONER OF CUSTOMS (IMPORT) AIR

CARGO COMPLEX NSCBI AIRPORT & ORS.Respondents

Through: Mr. Satish Aggarwala, Sr. Standing
Counsel for Indirect Taxes,
Department of Revenue for R-1.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE DHARMESH SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner- M/s. Om Gems & Jewellery challenging the assessment order dated 23rd February, 2024 passed by the Adjudicating Authority and sought release of the bank guarantee amounting to Rs. 22,07,264/- from the Respondent. This is the second round of litigation. The earlier round has culminated in the decision of this Court in *M/s. Om Gems & Jewellery v. Principal Commissioner, Directorate of International Customs, Free Trade Agreements (FTA) Cell New Delhi & Ors., 2023:DHC:8984-DB* which was disposed of vide order dated 14th December, 2023.
3. The brief background of this case is that the Petitioner had imported a



consignment of gold jewellery from Indonesia and had availed the benefit of exemption Notification No.46/2011-CU dated 01st June, 2011 and Notification No.12/2012-CE dated 7th March, 2012. According to the Petitioner, the said Notifications granted benefit of NIL rate of Basic Customs Duty ('BCD'). The authority, however, vide order dated 23rd January, 2016 directed the Petitioner to submit a Bank Guarantee and Bond for an amount equivalent to 100% of the differential BCD.

4. The said order dated 23rd January, 2016 was challenged by the Petitioner and in an appeal, the goods were directed to be released, subject to accepting 20% of the duty on the imported goods along with Bond. Pursuant thereto, the Bank Guarantee for the sum of Rs.22,07,264/- was furnished by the Petitioner and even the Countervailing Duty ('CVD') was paid for an amount of Rs.6,67,936/- and the provisional assessment was, accordingly, done on 19th July, 2016.

5. Repeatedly, the Petitioner sought finalization of the assessment. However, the same was not done, which led to filing of the writ petition being **W.P.(C) 11831/2023**. The reliefs sought in the said writ petition were as under:

“That this Hon'ble Court be pleased to issue a Writ of mandamus, or any other appropriate Writ, order, or direction, directing the Respondents to finalize the provisional assessment of Bill of Entry 2894698 dated 12.10.2015 (ANNEXURE P1 at Page No.49-52) and release the Bank Guarantee dated 13.07.2016 furnished by the Petitioner, back to the Petitioner along with applicable interest (ANNEXURE-P4 at Page No.55-59);



(b) For such further and other reliefs, including costs of this Petition, as this Hon'ble Court may deem fit and proper in the nature and circumstance of the case.”

6. In the said petition, the Coordinate Bench of this Court considered the matter and vide order dated 14th December, 2023, finally directed as under:

“24. On an overall consideration of the above, we find that the claim for interest as raised by the petitioner clearly merits acceptance. As we had found hereinabove, the DRI had duly completed the COO Certificates verification exercise and had also shared the requisite results thereof with the respondents. Despite the above, the respondents failed to conclude the provisional assessment proceedings. The information in respect of the COO Certificate verification had been shared with the field authorities way back in 2016. There was thus no justification for the respondents having failed to render a closure to the proceedings at that stage itself. We were also not apprised of any other legal impediment that may have operated and restrained the respondents from finalizing the provisional assessment. It also becomes pertinent to note that the provisional assessment itself was initiated not on an allegation of any undervaluation or wrongful declaration of the value of goods, the same was founded solely on the opinion formed by the respondents that the COO Certificates merited verification. In view of the above, we are of the considered opinion that the indolence exhibited by the respondents is rendered wholly arbitrary.

25. The writ petition consequently stands allowed. The respondents are directed to release the BG and any other monies retained forthwith subject to whatever final orders that they may choose to pass while finalizing the provisional assessment proceedings. The petitioner is also held entitled to be compensated by way of payment of interest @ 6% per annum on that refund



which shall commence from 17 March 2016 when the DRI shared the verification reports till such time as the monies are ultimately repaid.”

7. As can be seen from the above judgment, the Bank Guarantee was directed to be released along with interest at 6% per annum. However, the same was subject to final orders that could be passed by the authority after the finalization of provisional assessment proceedings.

8. The Bank Guarantee, as directed by the Division Bench, has not been released by the Customs Department. In the meantime, however, vide the order dated 23rd February, 2024, the final assessment order has been passed, which is assailed before this Court in this petition.

9. In terms of the final impugned assessment order dated 23rd February, 2024, demands were raised and penalties were imposed on the Petitioner. The said order by the Office of the Pr. Commissioner of Customs (Airport & ACC) reads as under:

“55. On the basis of facts and observations mentioned above and as per the directions of the Order of the Hon'ble Delhi High Court pronounced on 14.12.2023 in the matter of import of gold jewellery from Indonesia by the importer M/s Om Gems & Jewellery (IEC 0507087437), against Bill of Entry No. 2894698 dated 12.10.2015 under the claim of benefit under the notification no. 46/2011-Cus, dated 01.06.2011 read with notification no. 189/2009- Cus (NT) dated 31.12.2009 as amended the preferential treatment of the goods imported vide Bill of Entry No. 2894698 dated 12.10.2015 is being denied.

Accordingly, I order for the final assessment of the gold jewellery imported from Indonesia denying the preferential treatment of the goods with Basic Customs



Duty @ 15% against Bill of Entry No. 2894698 dated 12.10.2015.

I also order for making appropriate adjustments for recovery of the amount of differential duty that shall arise on denial of the above benefit and the duty already paid from the bank guarantee submitted as security.

I also order for payment of the interest as applicable under sub-section (3) of Section 18 of the Customs Act 1962 on finalization of the above provisional assessment

Finally, in accordance with the directions of the Hon'ble High Court I also order that the amount of differential duty and the interest applicable as discussed above shall be paid by the importer only after adjustment of the interest @ 6% per annum w.e.f. 17.3.2016 that has accrued on the above bank guarantee amount"

10. In terms of the above order, it can be seen that the Customs has directed adjustment of the amount payable to the Petitioner in terms of the Division Bench judgment dated 14th December, 2023. The amount payable by the Petitioner is also not quantified in the said order.

11. Ld. Counsel for the Petitioner has made two fold submissions:

- That the final assessment is highly belated and hence the entire proceeding itself deserves to be quashed;
- That the Customs department is guilty of dereliction as the bank guarantee is not released till date.

12. As per the counter affidavit, Mr. Aggarwala, Id. Counsel submits that the amount payable would be Rs.1,02,68,969/- along with interest. On being queried, as to why the counter affidavit does not even consider the order of the Division Bench, Mr. Aggarwala submits that the same is a lapse on behalf



of the department.

13. Heard. There can be no doubt about two facts, firstly that the Division Bench judgment had to be complied with and the Customs Department could not hold back compliance thereof by directing adjustment in the final order. Such a course of action would not be permissible. Secondly, insofar as the impugned order is concerned, the same is an appealable order. Delay in passing the impugned assessment order is a ground on which the Petitioner seeks to challenge the same. The ground of delay can also be raised in the appeal. The appellate forum would then consider the reliefs sought in the first writ petition also while deciding whether there was delay.

14. This Court is also not to go into computation in terms of the impugned order. That would be a factual determination. Since the impugned order is appealable, this Court does not wish to go into merits of the order or the aspect of delay. Accordingly, in the overall circumstances, the following directions are being issued:

- (i) The Petitioner is permitted to file an appeal challenging the impugned order dated 23rd February, 2024 within a period of 30 days from today along with requisite pre-deposit in terms of the Act;
- (ii) The judgment dated 14th December, 2023, shall be given full effect and the Bank Guarantee along with the interest, shall be released in favour of the Petitioner within eight weeks. These two acts shall be carried out independently of each other and shall not be dependent on one another;
- (iii) The Commissioner (Appeals) shall adjudicate the appeal against the impugned assessment order dated 23rd February, 2024 without being prejudiced either by the present order or the earlier order passed by



this Court at the stage of provisional assessment.

15. There is also a reply affidavit, which has been filed by the Commissioner of Customs, Calcutta in which the stand is being taken by the Department that the amount, which has been deposited by way of a Bank Guarantee, jeopardized the interest of revenue. The Court notices a serious lapse in the said affidavit as the affidavit which is dated 7th May, 2024 does not take into consideration the judgment passed by this Court on 14th December, 2023. Such lapses ought not to be repeated.

16. If the Bank Guarantee along with interest is not released, the official/officer concerned shall be personally responsible for the same. If that is so, the Petitioner is permitted to move an application before this Court.

17. The present petition is disposed of in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

DHARMESH SHARMA
JUDGE

JANUARY 21, 2025/dk/ks