2024:DHC:1021-DB

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 08.02.2024

\+ **CUSAA 1/2024 & CM APPL. 545/2024**

PRINCIPAL COMMISSIONER OF CUSTOMS .....Appellant

versus

TASHA GOLD PVT. LTD ..... Respondent

Advocates who appeared in this case:

For the Appellant:	Mr.Hapreet Singh, Senior Standing Counsel with Mr. Suhani Mathu, Mr. Jatin Kumar Gaur, Mr. Gupreet Singh Gulati and Mr. Akshay Saxena, Advocates.
For the Respondent:	Mr. Rajshekhar Rao, Senior Advocate with Mr. Arjun Raghavendra, Jayant Kumar, Mr. Piyush Deshpande, Ms. Hemlata Rawat and Ms. Yamini Mookherjee, Advocates.

CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant impugns order dated 05.12.2023, passed by the Custom Excise and Service Tax Appellate Tribunal, whereby the Tribunal has permitted provisional release of 26 gold dore bars weighing 5 kg. plus, subject to the following conditions:-

> "*1. That the duty paid at the time of seeking release of goods of Rs. 15.20 croresapproximately, even if voluntarily paid or paid under protest shall not be sought for refund by the appellants and shall available to the department till culmination of adjudication.*
>
> *2. One Gold Dore Bar weighing 4.24 kg will remain available with as security and shall not be released including release for re export if sought by the party till adjudication is over. Apart from above security the party shall furnisha binding itself to pay equivalent of full value of consignment plus 20% in lieu of penalty thereon, to the department.*
>
> *3. That the provisional release by the department, shall be done within two weeks of compliance and documentation of formalities as per para (1) and (2) above, by the appellant.*"

2. Directorate of Revenue Intelligence (DRI) had issued a Notification No.96/2008-Customs, providing for Preferential Tariff Scheme for import of gold from Lesser Developed Countries. A subsequent Notification No.50/2017-Customs was issued on 30.06.2017, imposing certain monetary conditions.

3. Respondent filed a Bill of Entry for import of 27 gold dore bars from Republic of Rwanda, which is one of the Lesser Developed Countries covered by the above-referred Notification No.96/2008-Customs.

4. Though there are several conditions which have to be satisfied,for the subject Bill of Entry, there are two conditions which are relevant, i.e.each of the gold dorebars must weigh a minimum of 5 kgs and have a purity of less than 95% for being imported under the said Notification.

5. In view of certain inputs received by the DRI, a search at the premises of the respondent was carried out and subject 27 gold dore bars were confiscated. The contention of the DRI was that the gold dore bars did not meet the requisite specification of weight as well as purity.

6. This was disputed by the respondent in respect of 26 gold dore bars. In respect of 1 gold dore bar, the gold dore bar admittedly weighed 4.24kgs. As per the respondent, there was no misdeclaration for the reason that the packaging of the said gold dore bar clearly mentioned that it weighed 4.24kgs. With regard to weight and purity of the remaining 26 gold dore bars, it was contended by the respondent that the gold dore barsweighed more than 5 kgs and had purity of less than 95%.

7. The gold dore bars were tested at the Central Revenue Control Laboratory (CRCL). In response to a query raised under the Right to Information Act, CRCL had responded that there was a margin of error of +/- 0.25% in testing of gold dore bars through the test method adopted by them.

8. Learned counsel submits that there were 3 gold dore bars which testedwith a purity of more than 95% but were within the margin of error i.e., 95.10%, 95.26% and 95.17%.Learned senior counsel for respondent submits that the margin of error of .01% was too low for the authorities to have taken action.

9. Respondent had applied for a provisional release of the gold dore bars, however, the Principal Commissioner of Customs rejected the request for provisional release leading to the respondent approaching the Tribunal.

10. By the impugned order dated 05.12.2023, the Tribunal has considered the test report as well as the percentage of margin of error and thereafter directed provisional release of 26 gold dore bars weighing 5 kgs. plus.

11. Aggrieved by the said decision, appellant had approached this Court. On 10.01.2024, noticing the earlier test reports as also the margin of error, this Court directed the appellant to have all the 26 gold dore bars weighing more than 5 kgs. re-tested.

12. Test reports have been produced and are taken on record.

13. It is noticed that 25out of 26 gold dore bars have tested with a purity of less than 95% and 1 gold dore bar has tested with a purity of 95.05%, which is within the permissible margin of error of +/- 0.25%.

2024:DHC:1021-DB

14. Learned counsel for Appellant submits that the Tribunal has erred in holding that even if the goods are found to be restricted or prohibited at the time of import, they would still be subject to provisional release.

15. It is held that observation of the Tribunal that even if the goods are found to be restricted or prohibited at the time of importwould still be subject to provisional release, would not amount to expression of opinion and is held to be restricted to the facts of this case.

16. In view of the peculiar facts and circumstances of the case, we find that the issue is purely factual and no substantial question of law arises for consideration.

17. The appeal is accordingly dismissed. The order of the Tribunal dated 05.12.2023 be complied with within one week.

18. *Dasti* under signature of the Court Master.

SANJEEV SACHDEVA, J

FEBRUARY 08, 2024/NA **RAVINDER DUDEJA, J**