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

+ **W.P.(C) 7876/2024 & CM APPL. 32599/2024**

M/S AUGMONT ENTERPRISES PVT. LTD. Petitioner

Through: Mr. Kishore Kunal, Ms. Runjhun Pare, Mr. Mahesh Singh, Mr. Jayesh Sitlani and Mr. Anuj Kumar, Advocates

versus

**COMMISSIONER OF CUSTOMS, ACC (IMPORTS),
NEW CUSTOMS HOUSE, NEW DELHI & ORS. Respondents**

Through: Mr. Aditya Singla, Senior Standing Counsel with Ms. Saakshi Garg and Mr. Ritwik Saha, Advocates for R-1 & R-2

Ms. Arunima Dwivedi, CGSC with Ms. Pinky Panwar and Mr. Aakash Pathak, Advocates for UOI

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

28.05.2024

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1. Petitioners impugn Show Cause Notices dated 24.04.2024, whereby the Commissioner of Customs has put the petitioners to notice as to why duty, penalty and interest be not levied on the petitioners for wrongful availment of Duty Exemption Notification No.96 of 2008 dated 13.08.2008 in respect of the respective Bills of Entries filed by the petitioners.

2. Petitioners had imported gold dore bars from countries which

W.P.(C) 7876/2024

1



have been classified as Least Developed Countries in terms of Notification No.96/2008. At the time when Bills of Entries were filed, the release of consignment was permitted on the basis of Notification No.96 of 2008, however, subsequently the subject Show Cause Notices have been issued contending that the import condition as imposed by the Director General of Foreign Trade in the import licences issued to the petitioners mandated that import was subject to Notification No.12/2012 dated 17.03.2012, as amended from time to time (which is now been substituted by Notification No.50 of 2017).

3. Learned senior counsel for the petitioners submit that petitioners had imported gold dore bars from the Least Developed Countries and as such were covered under Notification No.96 of 2008, which completely exempts the customs duty as well as the Agricultural Infrastructure Development Cess. He submits that the import was not wrongful and benefit of the Notification has not been wrongfully claimed.

4. Learned counsel further submits that the DGFT did not have the power to impose any condition contrary to the exemption Notification issued by the Central Government under Section 25 of the Customs Act. He further submits that even if any condition is imposed contrary to any exemption Notification the exemption Notification, having been issued by a higher authority, will override such a condition.

5. Learned counsel relies on judgment of the Supreme Court in *Abrol Watches Pvt. Ltd. Vs. Collector of Customs, Bombay, (1997)*

W.P.(C) 7876/2024



11 SCC 321 as also the order of the Supreme Court in *Collector of Central Excise, Baroda Vs. Indian Petro Chemical, 1997 (92) ELT 13 (SC) and HCL Ltd. Vs. Collector of Customs 2001 (130) ELT 405 SC*, wherein the Supreme Court has held that where two exemption Notifications cover the goods in question, the assessee is entitled to benefit of the exemption Notification which gives him greater relief.

6. Issue notice. Notice is accepted by learned counsel appearing for the respondents who pray for time to file counter affidavit. Let the same be filed within six weeks. Rejoinder within six weeks thereafter.

7. List on 24.09.2024. In the meantime, the petitioners may participate in the adjudication of the Show Cause Notices by filing a reply and also appearing pursuant to a Notice for personal appearance. The competent authority shall be at liberty to adjudicate the Show Cause Notice, however, in case any adverse order is passed, the same shall not be implemented till the next date of hearing.

SANJEEV SACHDEVA, J

TUSHAR RAO GEDELA, J

MAY 28, 2024

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W.P.(C) 7876/2024

3