

D N Patel, CJ & C Hari Shankar, J

Dated: December 11, 2019

Appellant Rep by: Mr Kishore Kunal and Mr Pratush Choudhary, Advs.

Respondent Rep by: Mr Manik Logra, CGSC with Mr Arjun Dev, Adv., Mr Amit Bansal, SSC with Mr Aman Rewaria and Ms Vipasha Mishra, Advs.

Cus - The disputes in the five writ petitions revolved around Notfns 24/2015-2020 and 25/2015-2020 issued by DGFT and Public Notice 20/2001-2020 and the applicability of said Notfns and Public Notice to the gold coins imported by petitioner - On the ground that the import of gold coins by them had not been effected in accordance with the aforesaid Notfns 24/2015-2020 and 25/2015-2020, SCNs were issued to petitioners proposing confiscation of gold coins and imposition of penalty - Vide the judgment under review, court quashed the impugned Notfns - The Notfns and Public Notice 20/2015-2020 would not apply to the coins imported by various petitioners, as the said gold coins had left the Republic of Korea on 25th August, 2017 - Under the impression that the SCN, proposing confiscation of gold coins and imposing of penalty, issued on 8th September, 2017, had been challenged only by the petitioner in Jindal Dyechem Industries (P) Ltd. the said SCN is set aside - It was also observed that as the other two petitioners, namely, the present review petitioner M/s. M.D. Overseas Ltd. and M/s. Kundan Care Products Ltd., had not impugned the SCNs issued to them, court was not in a position to quash the SCN in their cases - The confusion appears to have arisen owing to challenging by the petitioner of Notfns and Public Notice and the SCN issued in terms of the said notfns and Public Notice, vide the present writ petition - It was owing to this duplication of proceedings that this Court, under the impression that the SCN was not challenged, expressed its inability to quash the same - As it happens, however, the SCN issued to the petitioner has, in fact, been challenged by petitioner, in which the Review Petition has been filed - As such to maintain parity with the relief granted to M/s. Mink Tradecom Pvt. Ltd., it would be apposite that the SCN issued to the petitioner be also quashed - The SCN issued to the petitioner is quashed and set aside: HC

Review petition allowed

Case laws cited:

Jindal Dyechem Industries (P) Ltd) WP(C) No. 8667/2017... Para 6

M/s. M.D. Overseas Ltd - 2019-TIOL-2779-HC-DEL-CUS... Para 7

JUDGEMENT

Per: D N Patel:

CM Appl. No. 50488/2019 (condonation of delay)

- 1. This application has been preferred for condonation of delay of five days in preferring the review petition in WP(C) No. 8204/2017, which was disposed of finally by this Court vide order dated 15th October, 2019 = 2019-TIOL-2779-HC-DEL-CUS.**
- 2. Looking to the reasons stated in this application, there are reasonable reasons for condonation of delay. We, therefore, condone the delay in preferring the review petition.**

**3. In view of the aforesaid facts, this application is allowed and disposed of.
Review Petition no. 484/2019 in WP(C) No. 8204/2017**

- 1. This review petition seeks review of the judgment, dated 15th October, 2019, passed by this Bench in a batch of five writ petitions, of which the present writ petition, WP(C) No. 8204/2017 = 2019-TIOL-2779-HC-DEL-CUS is one. In the said batch of five writ petitions, another writ petition of the present petitioner, namely, WP(C) No. 7838/2017 = 2019-TIOL-2779-HC-DEL-CUS was also listed.**
- 2. The disputes, in the five writ petitions, revolved around Notifications 24/2015-2020 and 25/2015-2020, dated 25th August, 2017, issued by the Director General of Foreign Trade (DGFT) and Public Notice No. 20/201-2020, dated 25th August, 2017 and the applicability of the said Notifications and Public Notice to the gold coins imported by the petitioner.**
- 3. We have, in our judgment, held that the aforesaid Notifications 24/2015-2020 and 25/2015-2020, dated 25th August, 2017, were, in fact, gazetted only at 10:47 p.m. on 28th August, 2017 and, would, come to effect only at that point of time. As the imports of gold coins had been effected by the various petitioners prior thereto, we have held that the said imports could not be subjected to the rigour of Notifications 24/2015-2020 and 25/2015- 2020, dated 25th August, 2017, and Public Notice No. 20/2015-2020 dated 25th August, 2017.**
- 4. On the ground that the imports of the gold coins by them had not been effected in accordance with the aforesaid Notifications 24/2015-2020 and 25/2015-2020, dated 25th August, 2017, Show Cause Notices, dated 8th September, 2017, were issued to the petitioners, proposing confiscation of the gold coins and imposition of penalty.**
- 5. Vide our judgment under review, we quashed the impugned Notification 24/2015-2020 and 25/2015-2020, dated 25th August, 2017. We held that Notifications 24/2015-2020 and 25/2015-2020, dated 25th August, 2017, and Public Notice 20/2015-2020, also dated 25th August, 2017, would not apply to the coins imported by the various petitioners, as the said gold coins had left the Republic of Korea on 25th August, 2017.**
- 6. Under the impression that the Show Cause Notice, proposing confiscation of gold coins and imposing of penalty, issued on 8th September, 2017, had been challenged only by the petitioner in WP(C) No. 8667/2017 (Jindal Dyechem Industries (P) Ltd) we quashed the said Show Cause Notice. It was also observed, by us that, as the other two petitioners, namely, the present review petitioner M/s. M.D. Overseas Ltd. and M/s. Kundan Care Products Ltd., had not impugned the Show Cause Notices. dated 8th September, 2017 issued to them, we were not in a position to quash the Show Cause Notice in their cases.**
- 7. By the present review petition, M/s. M.D. Overseas Ltd. has pointed out that in WP (C) No. 8204/2017 = 2019-TIOL-2779-HC-DEL-CUS, which was one of the five writ petitions decided by our aforesaid judgment, the Show Cause Notice, dated 8th September, 2017, issued to it, had, in fact, been challenged, and that, in observing that there was no challenge to the said Show Cause Notice, an error has crept into our judgment.**

- 8. The confusion appears to have arisen owing to the challenging by the petitioner of Notifications 24/2015-2020 and 25/2015-2020, dated 25th August, 2017, and Public Notice 20/2015-2020, also dated 25th August, 2017, vide one writ petition, i.e., WP(C) 7838/2017 = 2019-TIOL-2779-HC-DEL-CUS, and the Show Cause Notice, issued in terms of the said notifications and Public Notice, vide the present writ petition, i.e., WP (C) 8204/2017. It was owing to this duplication of proceedings that this Court, under the impression that the Show Cause Notice dated 8th September, 2017 was not challenged, expressed its inability to quash the same.**
- 9. As it happens, however, the Show Cause Notice dated 8th September, 2017, issued to the petitioner has, in fact, been challenged by the petitioner vide WP(C) No. 8204/2017 = 2019-TIOL-2779-HC-DEL-CUS, in which the present Review Petition has been filed. As such to maintain parity with the relief granted to M/s. Mink Tradecom Pvt. Ltd., it would be apposite that the Show Cause Notice dated 8th September, 2017 issued to the petitioner, be also quashed.**
- 10. Mr. Amit Bansal, learned Senior Standing Counsel appearing for the Custom Authorities, very fairly does not oppose the prayer and acknowledges that, in fact, Show Cause Notice dated 8th September, 2017 has been challenged by the petitioner as well, in the present W P(C) 8204/2017 = 2019-TIOL-2779-HC-DEL-CUS.**
- 11. In view thereof, the Show Cause Notice dated 8th September, 2017, issued to the petitioner, is quashed and set aside.**
- 12. The review petition is allowed accordingly.**