



I Annual Caribbean Court of Justice International Law Moot (2009)

Guygold Investments Limited

v

The Co-operative Republic of Guyana

Chen Yi, a national of Hong Kong, acquired resident status in Dominica in 2004. In 2005, on payment of the required fee to the competent authorities, Chen Yi was granted economic citizenship and a national passport of Dominica. In February 2006, he incorporated a company in Guyana, Guygold Investments Limited, of which he was the sole shareholder, in order to buy and trade in gold jewellery produced in Guyana. He then took up residence in Guyana. Business was excellent, so Guygold Investments Limited decided to establish a subsidiary of the company in Trinidad & Tobago to retail gold jewellery made and sold in Guyana. Start-up costs of the subsidiary in Trinidad & Tobago would be approximately US \$100,000.

In May 2008, Guygold Investments Limited applied to the Central Bank of Guyana for foreign exchange approval to transfer the referenced amount in order to incorporate and establish a business in Trinidad & Tobago, but the application was refused after eight months without any reasons being given. While awaiting a response from the competent authority in Guyana, Guygold Investments Limited in December 2008 delivered a consignment of gold jewellery to the value of US\$25,000 from Guyana to its agent in Trinidad & Tobago to retail there, since the demand for the commodity was buoyant. The hope was to sell the jewellery before Xmas and before incorporation of the subsidiary.

Because the jewellery was not covered by a Community Certificate of Origin, the agent was unable to retrieve it in Trinidad & Tobago without payment of the CET required to be paid under the Revised Treaty of Chaguaramas (“the Treaty”) and he refused to pay the CET. The competent governmental authority in Guyana had refused to furnish Guygold Investments Limited with an appropriate certificate of origin despite convincing evidence that the jewellery was wholly made and produced in Guyana from Guyana gold. No reasons were provided for that refusal. The customs officials in Trinidad & Tobago retained the gold in bond pending payment of the CET.

Guygold Investments Limited now seeks leave under Article 222 of the Treaty to bring proceedings against Guyana submitting:

- (a) its application to move capital from Guyana to incorporate and establish a business in Trinidad & Tobago was refused, despite Guyana having removed restrictions on movement of capital to CARICOM Member States for any persons qualifying under Article 32.5 of the Treaty;
- (b) the gold consigned to its agent in Trinidad & Tobago was obviously of Community origin and therefore exempt from payment of the CET; and
- (c) the refusal to issue the certificate of origin was manifestly unlawful and unreasonable;

and requesting the Court:

- (i) to order Guyana to grant foreign exchange approval to transfer US \$100,000 to Trinidad & Tobago for the purpose of establishing a subsidiary;
- (ii) to order Guyana to prepare and deliver up to Guygold Investments Limited the relevant Certificate of Origin in no fewer than two weeks, in the absence of which to impose thereafter an appropriate penalty of Guyanese \$ 1 million a day for non-compliance.

Guyana, in its written submissions, has stated that Guygold Investments Limited is not a qualifying person within Art 32.5, so that the refusal of foreign exchange approval and of the Certificate of Origin was justified; while, in any event, the CCJ has no powers under the Treaty except to make declarations and, in particular, cannot make orders or impose penalties or fines. The CCJ has directed that the following issues shall be determined:

- (i) (a) Is Guygold Investments Ltd a qualifying person within Art 32.5, and (b) even if it is not, can this justify the refusal of a Community certificate of origin where it is conceded that the gold jewellery was of Community origin?
- (ii) Has the CCJ power to make the requested orders?