(2009) 08 AHC CK 0002

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition (Tax) No. 1314 of 2007

A.N. Shukla APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 12-08-2009

Acts Referred:
Customs Act, 1962 — Section 110(1A), 130

Citation : (2010) 257 ELT 377

Hon'ble Judges : Shashi Kant Gupta, J;Rajesh Kumar Agrawal, J

Bench : Division Bench

Advocate : Atul Mehra, for the Appellant; Shambhu Chopra, for the Respondent

Judgement

1. The truck No. W.B. - 03/A 0367 owned by the petitioner was intercepted on 9-8-2009 and 301.21 Kilograms of Chinese Silk Yarn, a contraband goods was found to be concealed between the bundles of laminated jute bags. The truck was seized by the custom authorities. Show cause notice was issued to the petitioner. The petitioner submitted his reply. However, by the order dated 31-3-1999, the vehicle was confiscated and was directed to be released on deposit of Rs. 1 lakh. Some penalty was also imposed upon the petitioner.

2. It appears that during the pendency of adjudication proceedings, the vehicle had been sold on 22-3-1999 for a sum of Rs. 3,31,000/-. The Tribunal in the appeal preferred by the petitioner sometimes in the year 2003 by the judgment and order dated 8-4-2005 2005 (187) ELT 269 rejected the appeal, but reduced redemption fine to Rs. 50,000/-, and penalty to Rs. 20,000/-. Further, appeal u/s 130 of the Customs Act, 1962, before this Court was dismissed vide judgment and order dated 14-3-2007. Thereafter, the petitioner took steps for release of the seized truck showing his intention to deposit redemption fine and penalty, the total of which comes to Rs. 70,000/-. At that point of time, the petitioner was informed that the vehicle has already been sold on 22-3-1999 for a sum of Rs. 3,31,000/-.

3. By means of this writ petition, the petitioner seeks a writ order or direction in the nature of mandamus directing the respondent to refund Rs. 5,30,000/- to the petitioner i.e. after deducting a sum of Rs. 70,000/- from the punch value of the vehicle amounting to Rs. 6,00,000/- and also not to recover Rs. 20,000/- towards personal penalty imposed upon the petitioner.

4. We have heard Sri Atul Mehra, learned Counsel for the petitioner and Sri Shambhu Chopra, learned standing counsel appearing for the respondents.

5. Sri Mehra submitted that the action of the authorities in auctioning the vehicle even prior to the adjudication order was wholly illegal, and in any event the petitioner is entitled for refund of Rs. 5,30,000/- by treating the punch value of the vehicle at Rs. 6,00,000/-. He further submitted that the personal penalty of Rs. 20,000/- ought not to be recovered from the petitioner.

6. Sri Chopra, learned standing counsel invited the attention of this Court to the Notification dated 5-2-1986 as amended from time to time issued u/s 110(1A) of the Customs Act, 1962, wherein, the Central Government had empowered the authorities to sell the seized conveyance also, even before the adjudication order. He, therefore, submitted that the action of the authorities is valid.

7. We have given our thoughtful consideration to the various pleas raised by the learned Counsel for the petitioner. We find that the custom authorities have been authorised by way of Notification issued by the Central Government u/s 110(1A) of the Act to sell the seized vehicle even before the adjudication order is passed. We may mention here that in the present writ petition, the petitioner is not claiming the return of the truck. He is only claiming the refund of Rs. 5,30,000/- by treating the value of the truck at Rs. 6,00,000/-, which is the punch value given by the authorities at the time of seizure of the truck. We find from Annexure 1 filed along with the writ petition that the year of manufacture of the vehicle in question is 1995 as per the Form 47, which is an authorisation for Tourist Permit of National Permit issued by the Secretary, State Transport Authority, West Bengal. On a query being made as to what was the price of the truck in the year 1995, Sri Mehra submitted that it was purchased for about Rs. 6,00,000/-. The vehicle has been used in the transport business since August 1995. The value of the truck has depreciated and if the rate of depreciation as admissible under the Income Tax Act is applied, the value of the vehicle would be near about the same on which it has been sold by way of auction on 22-3-1999. That being the position, we can not accept the plea advanced by Sri Mehra that the punch value of Rs. 6,00,000/- should be taken as the value of the vehicle. Further, we find that there is no justification for the authorities to retain the balance amount after deducting the redemption fine and penalty from the sale proceeds of the vehicle.

8. So far as the plea that the personal penalty of Rs. 20,000/- be not realised from the petitioner is concerned, we find that the order of the Tribunal by which the personal penalty has been reduced to Rs. 20,000/- has been upheld by this

Court by the judgment and order dated 14-3-2007, wherein, the appeal preferred by the petitioner has been dismissed.

9. In view of the foregoing discussions, we partly allow the writ petition with a direction to the respondent No. 2 to forthwith refund the sum of Rs. 2,61,000/- being the balance amount of the sale proceeds of the vehicle No. W.B. - 03/0367, within a month from the date of certified copy of this order is filed with the said authority.

10. However, in the facts and circumstances of the case the parties shall bear their own costs.

