(2003) 11 CAL CK 0010

In the Calcutta High Court

Case No : Writ Petition No. 2211 of 2002

Bhogilal Mehta APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 03-11-2003

Acts Referred:
Constitution of India, 1950 — Article 14
Customs Act, 1962 — Section 110, 150

Citation : (2004) 112 ECR 447 : (2004) 164 ELT 239

Hon'ble Judges : Kalyan Jyoti Sengupta, J

Bench : Single Bench

Advocate : Choudhury, for the Appellant;Ali, for the Respondent

Judgement

Kalyan Jyoti Sengupta, J.—The Court : By this writ petition the writ petitioner has asked for realisation of the seizure value of the goods which were ceased under the provision of Section 110 of the Customs Act. The department concerned has made over the actual value of the goods long after the seizure was effected. The narration of the short fact is required to be stated hereunder.

2. The department concerned had one point of time ceased certain sewing machine and accessories thereto. There were three items of materials. Necessary proceeding was initiated by issuing show cause notice. Petitioner replied to the show cause notice and then adjudication was done by the appropriate authority. Upon adjudication the Item No. 2 of the ceased goods was directed to be released unconditionally. However, the other items being Item Nos. 1 and 3 were confiscated but allowed to redeemed by the petitioner upon payment of penalty of a sum of Rs. 7,500/-. The petitioner ultimately paid that amount of penalty on the one hand and preferred an appeal against the order of the appropriate authority to the CEGAT on the other hand. The learned CEGAT granted relief to the petitioner and set aside the order of confiscation together with order of redemption and payment of penalty. Even after deposit of amount of penalty the petitioner could not get release of the goods. Despite several representations

being made, the goods could not be returned because it was sold by the department. The department had made over the actual proceeds of the sale of Rs. 27,417/-.

3. The petitioner, therefore, preferred an appeal against the order refusing to pay seizure value of these goods and the appeal was not allowed. Even intervention of the learned CEGAT proved to be ineffective in this respect.

4. By this writ petition the petitioner has challenged all the orders refusing to pay the seizure value of the goods. Mr. Choudhury appearing for the petitioner, submits that in the affidavit-in-opposition the department has failed to establish how the sale was conducted. He has drawn my attention to the procedure for holding the sale in case of the goods not being confiscated. He submits that no notice was served and behind the back of the petitioner the goods were sold. Therefore, according to him, in due observance of Rule of Law when the goods themselves could not be returned even on redemption then the value of the goods, viz., the seizure value should have been given. In support of the submission he has relied on a decision of the Delhi High Court reported in 2001 (128) E.L.T. 54 (Del.).

5. Mr. Ali, learned Counsel appearing for the respondent; submits that since the matter is pending for a long time, there was no option but to sell the goods in order to get market value as far as practicable. He, however, is unable to satisfy the Court as to how the sale was undertaken. He submits that actual price of the goods fetched by sale should be the value of the goods, not the seizure value. So there is no question of paying seizure value of the goods or for that matter of payment of interest.

6. Having heard the respective contentions of the learned Counsels, I think the point which has fallen for consideration of this Court is that whether on the facts and circumstances of the case seizure value of the goods should be given to the petitioner or the value fetched by sale should be appropriate, under law.

7. The admitted position is that the properties were seized and the valuation was arrived at the time of the seizure which is obviously much more than the value fetched by sale. The method and procedure for sale of the goods has been provided in the Act. Section 150 of the Customs Act provides for sale of the goods in the manner as follows :

"150. Procedure for sale of goods and application of sale proceeds. -

(1) Where any goods not being confiscated goods are to be sold under any provisions of this Act, they shall, after notice to the owner thereof be sold by public auction or by tender or with the consent of the owner in any other manner.

(2) The proceeds of any such sale shall be applied -

(a) firstly to the payment of the expenses of the sale,

(b) next to the payment of the freight and other charges, if any, payable in respect of the goods sold, to the carrier if notice of such charges has been given to the person having custody of the goods,

(c) next to the payment of the duty, if any, on the goods sold,

(d) next to the payment of the charges in respect of the goods sold due to the person having the custody of the goods,

(e) next to the payment of any amount due from the owner of the goods to the Central Government under the provisions of this Act or any other law relating to customs, and the balance, if any, shall be paid to the owner of the goods."

8. In this case the goods were not ultimately confiscated, though initially the goods were seized by the Department. In my view, until and unless the entire proceedings came to an end, the Department concerned should have held the goods as a trustee thereof as ultimately the goods were required to be returned to the petitioner either by way of redemption or by unconditional release in terms of the order of competent authority. First order was passed in the year 1992 when Hem No. 2 in the seizure list was directed to be released unconditionally and the sale has been held in the year of 1997. In any view of the matter, goods bearing Item No. 2 should have been released immediately as the Customs Authorities have no jurisdiction or authority to sell same. The seized value of the goods in this case so far as Item No. 2 is concerned shall be the value and this should have been paid by the Department concerned without any hesitation. Next question remains with regard to Item Nos. 1 and 3 which were ultimately held to be returned. Upon reading of the aforesaid Section, in my view, the goods which arc not liable to be confiscated and remaining in the custody of the Customs Authorities, may be sold but this shall be done by and under the procedure provided in the said Section itself. The Customs Authorities have not come forward with any explanation in the affidavit as to how the sale took place; whether the sale was undertaken by public auction or otherwise; whether the goods were valued properly or not are not explained. Fair procedure in the action of the Government ensures the legitimacy of any order, and it is in my view, part and parcel of Article 14 of the Constitution of India. In my view, in absence of any such explanation and elucidation as regard sale having taken place, the entire action of the Department concerned for holding sale of Item Nos. 1 and 3 are absolutely improper and void and therefore the price which is said to have been fetched from the so-called sale cannot be accepted to be the price of the goods of Item Nos. 1 and 3, for the simple reason it is unconstitutional as being without authority of law. The Delhi High Court decision as above is very useful guidance in this regard.

9. Mr. AH has tried to impress upon me that there is no option but to sell the properties as the matter was an old one and the goods could not be traced. In my view, such an explanation is far from satisfaction of the Court. As such, I hold that the petitioner is entitled to get the price of the goods as declared and accepted in the seizure list by the department. Admittedly, the petitioner has

been paid a sum of Rs. 27,417/-. Therefore, I direct the Department concerned to pay the sum of Rs. 1,38,233/-.

10. Thus, I set aside and quash all the orders refusing to pay the seizure value of the goods.

11. In the event the aforesaid payment is made within two months from the date of communication of this order, then there will be no liability for payment of interest. If the respondents fail to pay within the time as above, then the petitioner would be entitled to interest at the rate of 6% per annum on the said amount of Rs. 1,38,233/- until realisation. The petitioner is entitled to costs assessed at 200 gms. to be paid by the respondents and such payment of costs shall be made together with the payment, as aforesaid.

12. The writ petition is, thus disposed of.

13. Let signed copy of this order be made available to the parties only after putting in requisition for drawing up and completion of the order and also for the xeroxed certified copy thereof.

