
(1995) 10 AHC CK 0020

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1443 of 1988

Bishnu Narain alias Lal Ji Agrawal

APPELLANT

Vs

Collr. of C. Ex.

RESPONDENT

Date of Decision : 30-10-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 83 ELT 33

Hon'ble Judges : V.N. Khare, J; M. Katju, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. By this petition under Article 226 of the Constitution of India, the petitioner seeks direction from this Court commanding the Collector, Central Excise, to return seized gold weighing 1.311 Kg. and a sum of Rs. 10,000/- at the rate of 24 per cent per annum. In this petition the seizure of gold by the respondents was challenged on the ground that no fresh notice was given to the petitioner within 6 months from the date of order dated 27-3-1987 passed, by the Collector (Appeals). It appears that gold ornament was seized by the respondents from the petitioner. The petitioner was accordingly served with the show cause notice against proposed confiscation of seized gold and penalty. The Additional Collector vide order dated 11-12-1984 confiscated the seized gold and proposed redemption fine of Rs. 25,000/- and penalty of Rs. 10,000/-. Aggrieved petitioner filed an appeal before the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi. The Appellate Tribunal transferred the appeal to the Collector (Appeals) for decision on the ground that appeal against the order of Additional Collector lies to the Collector (Appeals) and not to the Appellate Tribunal. The Collector (Appeals) by order dated 27-3-1987 set aside the order passed by the Additional Collector and remanded the case to the Collector, Central Excise, Allahabad, for adjudication on the ground that on the date when the Additional Collector passed the order he was not having the jurisdiction to pass such an

order in view of the repeated instructions issued by the Central Govt. on 6-8-1984. After the remand order was passed and when the case was pending before the Collector, petitioner made an application for return of seized gold on the ground that no fresh notice has been given to him by the Collector within a period of 6 months from the date of the order of remand. Since petitioner's prayer was not accepted, he filed the present writ petition for the relief mentioned above. When the matter came up before a Bench of this Court, there was a difference of opinion between the two Judges and, as such, the question before the Full Bench was as to whether after remand the petitioner is entitled to fresh notice before the decision of the case by the Additional Collector. The Full Bench was of the view that if by the order of remand merely the order appealed against has been set aside and the matter has been sent back for decision/ adjudication again without there being any direction for fresh adjudication, fresh notice is not necessary and the person concerned is not entitled to return of the seized gold. In the present case the order of the Collector (Appeals) is reproduced here-in-below :-

"In the result, I set aside the impugned order and remand the case back with the directions that the case may be adjudicated by the Collector of Central Excise, Alld., so that appellant can go in appeal to the appropriate authority, if still aggrieved."

2. In this case the order reproduced above clearly shows that the Collector (Appeals) while remanding the case did not order for fresh adjudication. In view of the opinion of the Full Bench, the petitioner was not entitled to fresh notice before decision of the case by the Collector of Central Excise, Allahabad.

3. In view of this, we find no merit in this petition. It is, accordingly, dismissed. There shall be no order as to cost.