

(1989) 04 BOM CK 0034

In the Bombay High Court

Case No : Writ Petition No. 2661 of 1988

D. Navinchandra and Co.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 25-04-1989

Acts Referred:

Citation : (1991) 33 ECR 386 : (1989) 43 ELT 266

Hon'ble Judges : A.C. Agarwal, J

Bench : Single Bench

Judgement

A.C. Agarwal, J.—The Petitioners along with two other parties viz. M/s. B. Vijaykumar & Co. and M/s. Star Diamond Company (India) had challenged the order dated 30-10-1986 of confiscation and the fine levied in lieu of confiscation passed by the Collector. The Customs, Excise and Gold Control Appellate Tribunal by its order dated 10th August 1987 confirmed the order of the Collector. M/s. B. Vijaykumar & Co. and M/s. Star Diamond Company challenged that order by filing Civil Appeal Nos. 4445 and 4446 of 1988 in the Supreme Court. By order dated 16th December 1988 the Supreme Court allowed the aforesaid appeals and set aside the order of the Collector and the Tribunal with regard to the confiscation of the goods and imposition of redemption fine and directed the Custom authorities to refund the amount of redemption. The Petitioners in the present petition though governed by facts identical to the facts of M/s. B. Vijaykumar & Co. and M/s. Star Diamond Company, had not approached the Supreme Court. It, however, on 26th August, 1988 filed the present petition in this Court. Since the order which was impugned before the Supreme Court was a common order which governed the cases of the Petitioner as also of M/s. B. Vijaykumar & Co. and M/s. Star Diamond Company (India) and the facts of the Petitioner were identical to the facts of the aforesaid two concerns, in my view the order of the Supreme Court would govern the case of the Petitioner as well. The Petitioner under the impugned orders have paid to the fourth Respondent an amount of Rs. 41,00,000/- towards redemption fine. As we done by the Supreme Court in the case of the other two concerns, I direct the fourth Respondent to

refund the aforesaid amount to the Petitioner within a period of one months from today.

2. Mr. Shringarpure, the learned counsel appearing on behalf of the Respondents, initially stated that he has just received a telegram from Delhi instructing him to ask for an adjournment. He therefore prayed that the matter be adjourned. No reasons were assigned for seeking the adjournment. Since the petition was served upon the Respondents as far back as in September 1988 and the hearing had been expedited and had been directed to be placed on board for final disposal today, the prayer for adjournment is rejected.

3. Mr. Shringarpure further pointed out the operative part of the order of the Supreme Court wherein it has been recited as under :-

"We would like to emphasise that since we have decided the matter in view of the special facts and circumstances available in these cases, this order will not be treated as a precedent."

In my judgment, the aforesaid observation cannot come in the way of granting the reliefs prayed for in this petition as the facts and circumstances governing the case of the Petitioner is identical to the facts which were before the Supreme Court. Hence this contention of Mr. Shringarpure is liable to be negated.

4. In the result, the petition succeeds and rule is made absolute in terms of prayer clause (a). In the event of the fourth Respondent not refunding the amount of Rs. 41,00,000/- (Rupees Forty one Lakhs) within a period of one month from today, the said amount will carry interest at the rate of 12% per annum from today i.e. 25th April 1989. In the facts and circumstances of the case, there shall be no order as to costs.