(1986) 02 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1901 of 1980

Devi Parsan and Others APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 05-02-1986

Acts Referred:
Gold (Control) Act, 1968 — Section 15B, 16, 16(1), 16(8)

Citation : (1986) 9 ECC 171 : (1986) 24 ELT 248

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : J.N. Kaushal and V.K. Sharma, for the Appellant; G.S. Chawla, for Nos. 2 to 4, for the Respondent

Judgement

I.S. Tiwana, J.—The following facts furnish the background of the case :

On December 25, 1975, the petitioners in pursuance of a scheme published in the Government of India Gazette dated October 8, 1975, for voluntary disclosure of income and wealth made a disclosure to the Income Tax Commissioner, Patiala, to the effect that they had 113 gold biscuits, each weighing 10 tolas and 20 guineas. On the basis of this disclosure, they paid taxes to the tune of Rs. 1,25,000. Later on 5-1-1976 the petitioners reported theft of this gold to the police at Narwana, district Jind. As a result of the investigation that followed, the police prosecuted 9 persons resulting in their conviction. With the conclusion of the trial, the petitioners applied to the trial Court for the return of the gold in question. As a result of this, the trial Magistrate, vide his order dated March 16, 1978 directed the delivery of the gold back to the petitioners. Against, this order of the Magistrate, the custom authorities preferred an appeal before the Additional District and Sessions Judge, Jind. While upholding the order of the trial Court, the appellate Court vide its order dated September 20, 1979, Annexure P. 6 gave the following directions :

"After considering the matter and hearing both sides for reasons recorded above, I find these appeals without any substance. They are hereby dismissed. However, it is made clear that this order will be no bar in the way of the Customs Department or any other legal authority to investigate the matter in exercise of their legal powers. Further, it is directed that the Treasury Officer before actually delivering the property to Devi Parsan and others shall send intimation to Assistant Collector Customs, Rohtak. It is further directed that the Treasury Officer should not actually deliver the property to Devi Parsan etc. before 20-10-1976 so that if any of the parties wants to go in revision against my order, it could do so and obtain orders from the Hon''ble High Court."

Still not satisfied with this order, the said authorities preferred a revision petition in this Court which was finally disposed of on July 3, 1979, vide Annexure P. 7 upholding the order of the appellate authority. Those orders have un-disputably achieved finality and are binding on the parties including the customs authorities.

2. Strange as it my look, the above noted directions of the Court have not been carried out so far neither by the Treasury Officer in whose custody the gold in question is stated to be nor by the custom authorities in investigating the matter any further. This is in spite of the fact that during those years the petitioners made 3 applications (Annexure P. 2, P. 8 and P. 9) either claiming the return of the gold in question or seeking the permission of the Gold Control Administrator to convert the gold-which undoubtedly is primary gold in the light of the ordinance under which the disclosure had been made i.e. Voluntary Disclosure of Income and Wealth (Amendment) Ordinance, 1975. By virtue of Clauses 15 (A & B) of this Ordinance, the petitioners undisputably became entitled to either sell the gold to any licensed dealer under intimation to Gold Control Officer of the rank of Assistant Collector of Central Excise or Customs Department before the first date of February, 1976 or to convert the same into ornaments by making a declaration to that effect in the prescribed form in view of Sub-sections (1) and (8) of Section 16 of the Gold (Control) Act, 1968. But somehow, none of the authorities chose to decide those applications or to give relief sought for by the petitioners. Thus as a result of last resort, the petitioners have filed this petition for seeking a Mandamus to the respondent-authorities to decide the above-noted applications of theirs, i.e. Annexure P. 2, P. 8 and P. 9 on merits within a stipulated period and for the return of the gold in the light of the directions contained in the orders of the Judicial Courts i.e. Annexures P. 1, P. 6 and P. 9 and for a further relief in the light of Clause (ii) of Section 15-B of the Ordinance referred to above i.e. Ordinance No. 23 of 1975.

3. All that is being said on behalf of the respondent-authorities is that the Customs authorites have yet to investigate the matter with regard to the origin or the markings on the gold in question with a view to make up their mind as to what extent the gold has to be released to the petitioners ; therefore, the same be not handed over to the petitioners. Having heard the learned counsel for the parties at some length, I find no merit in the stand taken by the respondents.

4. As has already been indicated, the question with regard to the return of the gold to the petitioners has already been adjudicated and settled by the three

Courts including this Court vide orders Annexure P. 1, P. 6 and P. 7. I see no justification either with the Treasury Officer or with the custom authorities not to go by the directions contained in those orders. As a matter of fact, this should have been done long back. Similarly, I do not find any justification with the respondent-authorities not to decide the applications of the petitioners (Annexure P. 2, P. 8 and P. 9) on merits and in accordance with law.. In the light of this, I direct the respondent-authorities and the Treasury Officer, Jind to dispose of the question in the light of the directions contained in the orders of the Judicial Courts referred to above. Further, the respondent authorities are directed to dispose of the applications referred to above i.e. Annexures P. 2, P. 8 and P. 9 on merits and in accordance with law within a period of 3 months from today. For clarity sake, it is mentioned that since the period which was available to the petitioners for dealing with the gold under Sub-clause (ii) of clause 15-B of Ordinance No. 23 of 1975 has already elapsed for reasons which were beyond their control, they are held entitled to avail of that period, i.e. 2 months from the date of the delivery of the gold to them to deal with or to dispose of the gold in the manner specified in that clause.

5. Thus, this petition stands disposed of with the observations made above with costs which I determine at Rs. 500.

