
(1993) 01 MAD CK 0039
In the Madras High Court

Jahubarunneesa

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 01-01-1993

Acts Referred:

Customs Act, 1962 — Section 110, 124

Citation : (1993) 66 ELT 72

Hon'ble Judges : Venkataswami, J

Bench : Single Bench

Judgement

Venkataswami, J.—This writ petition is on the issue of a writ of mandamus directing the second respondent to return the sum of Rs.

54,600/- which was seized on 28-12-1985 in C. No. VII/10/21/86, Cus. Adj. dated 13-6-1986 from the petitioner's premises bearing Door No.

9, 14th Avenue, Harrington Road, Madras-31.

2. Brief facts are the following:-

On the basis of intelligence gathered, the Officers of the Directorate of Revenue Intelligence, Madras, alongwith the Officers of the Central Excise,

Madras, on 28-12-1985, searched among others the premises bearing Door No. 9, 14th Avenue, Harrington Road, Madras-31 (hereinafter

referred to as the "said premises"). As a result of the search of the said premises and others, the officers were able to recover cut and polished

diamonds, foreign currency, primary gold pieces, certain incriminating documents and also Indian currency amounting to Rs. 6,50,950/-. Out of the

above said recoveries, we are now concerned with only a sum of Rs. 54,600/-. Admittedly, the said premises belongs to the third respondent. It is

common ground that at the time of seizure, neither the petitioner nor her

husband, the 4th respondent, was present. Only the third respondent was present to give details about the items seized. In respect of the amount now in question, which was recovered among others from the bedroom of the petitioner and the 4th respondent, the third respondent informed the search party that the 4th respondent alone can explain the items seized from that bedroom. It appears that the 4th respondent has given a statement that the said sum of Rs. 54,600/- belonged to his wife, namely, the petitioner herein. However, he has not given a clear statement about this, and further, the petitioner has not put forward any claim on coming to know of the seizure of this amount, before the respondents 1 and 2. It may be mentioned that though in the affidavit filed in support of this writ petition, it is claimed that the petitioner sent a representation claiming the amount in question, the respondents 1 and 2, in the counter-affidavit, have denied receipt of any such statement, and no proof is produced before me to support the statement that such a representation was sent.

3. In these premises, learned Counsel for the petitioner submitted that inasmuch as the amount in question belonged to the petitioner, a show cause notice as contemplated u/s 124 of the Customs Act should have been issued to the petitioner, and in the absence of such a show cause notice, the petitioner is entitled to the return of the amount in the light of Section 110(2) of the Customs Act.

4. Mr. K. Jayachandran, learned Additional Central Government standing Counsel, submitted that the amount in question included the total amount of Rs. 6,50,950/-, and, all the amounts having been recovered from the premises belonging to the third respondent, a show cause notice was issued both to respondents 3 and 4 as certain items were claimed to belong to the 4th respondent. He also submitted that though the 4th respondent has given a statement to the effect that the said amount belonged to his wife, namely, the petitioner herein, no claim was made by the petitioner before the Authorities on coming to know of the seizure. Therefore, according to the learned counsel, there was no need to serve a show cause notice on the petitioner. It was further submitted by him that in respect of the seizure on 28-12-1985, adjudication proceedings are pending, and if so advised, the petitioner can appear before the Adjudicating Officer and establish her claim. According to him, the writ petition is

misconceived.

5. After hearing learned counsel on both sides and after going through the affidavit and counter affidavit, I find force in the argument of the learned

counsel for the Revenue that the statement of the fourth respondent was not unequivocal. Added to that, the petitioner has not established that she

has made any claim on coming to know of the seizure, to the effect that the amount in question belonged to her. In these circumstances, and in view

of the pendency of the adjudication proceedings, it is not advisable to probe further about the ownership of the amount in question in this writ

petition. No doubt, learned counsel for the petitioner has placed reliance on the passbook belonging to the petitioner to show that a large amount

of Rs. 70,000/- was withdrawn from her Savings Bank account just prior to the search and seizure. Learned counsel would argue that the said

documentary evidence corroborates the statement of the 4th respondent to the effect that the amount in question represents the balance of the

amount drawn from the Savings Bank account after spending for repairs of the petitioner's house. As stated earlier, in the absence of specific claim

by the petitioner stating that the amount in question belonged to her on coming to know of the seizure, and in view of the pendency of the

adjudication proceedings, I do not want to enter into this disputed question of fact.

6. For all the reasons stated above, without prejudice to the right of the petitioner to establish her claim in the adjudication proceedings, in

accordance with law, this writ petition is dismissed. No costs.