(2014) 01 BOM CK 0224

In the Bombay High Court

Case No : Notice of Motion No. 225 of 2012 in Writ Petition No. 2976 of 2004

Jatin C. Jhaveri — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 23-01-2014

Acts Referred:
Customs Act, 1962 — Section 110(1A)

Citation : (2014) 301 ELT 440

Hon'ble Judges : Mohit S. Shah, C.J;M.S. Sanklecha, J

Bench : Division Bench

Advocate : N.G. Thakkar, Sr. Advocate i/b., Mrs. Manjula Rao and Nanish Pai, Advocate for the Appellant; Pradeep S. Jetly and S.D. Bhosale, Y.S. Bhate and M.S. Bharadwaj, Advocate for the Respondent

Judgement

1. The applicant is the petitioner in Writ Petition No. 2976 of 2004. By this notice of motion the applicant seeks implementation of the order dated 19 October, 2010 passed by this Court in Writ Petition No. 2976 of 2004 [Union of India (UOI) Vs. Jatin C. Jhaveri,].

2. By order dated 19 October, 2010 another Division Bench of this Court by common order disposed of the three FERA appeals (bearing Nos. 64, 65 and 66 of 2006) filed by the Director of Enforcement and Writ petition No. 2976 of 2004 filed by the petitioner. The order dated 19 October, 2010 dismissed three FERA appeals filed by the Director of Enforcement on the ground that he is not entitled to file an appeal on behalf of the Central Government as held by the Apex Court in Mohtesham Mohd. Ismail v. Special Director, Enforcement Directorate and Anr. in 2007 AIR SCW 6348 : 2007 (220) E.L.T. 3 (S.C.). So far as the Writ Petition No. 2976 of 2004 is concerned, the order dated 19 October, 2010 allowed the petitioner''s prayer for release of US $ 289250 by the Customs department and permitted to export the same with the permission of Reserve Bank of India. However, the claim for interest made by the petitioner at 18% from the date of seizure till release of the foreign currency was rejected. The Division Bench by its

order dated 19 October, 2010 also granted the application of the revenue to stay the order releasing the amount of US $ 289250 which according to the revenue is lying with them, for a further period of 8 weeks.

3. We are informed that the Director of Enforcement has filed an appeal against the order dated 19 October, 2010 to the Supreme Court to the extent its three FERA appeals were dismissed. Similarly the petitioner has also filed an appeal against the order dated 19 October, 2010 to the extent his prayer for interest in Writ Petition No. 2976 of 2004 was rejected. We are told that the appeals are listed for hearing on 8 July, 2014. However, it is significant that the Customs Department which was a party respondent in Writ Petition No. 2976 of 2004 and were directed to return US $ 289250 to the petitioner have not preferred any appeal from order dated 19 October, 2010 to the Apex Court. Thus the order dated 19 October, 2010 of this Court is binding upon the Customs department to the extent of refunding US $ 289250 to the petitioner.

4. Consequent to the order dated 19 October, 2010 in Writ Petition No. 2976 of 2004 the applicant approached the Customs Department seeking the refund of US $ 289250 along with no objection from the Reserve Bank of India to export the same. On 5 March, 2012, the Commissioner of Customs directed a refund of US $ 289250 to the applicant in accordance with the rules. On 12 April, 2012 the Dy. Commissioner of Customs sanctioned refund of Rs. 89,23,362/-. This on the ground that that consequent to seizure, the US $ 289250 was converted into Indian rupees in 1994 resulting in Rs. 89,23,362/-.

5. Mr. Nitin Thakkar, Senior Counsel in support of the application states that in spite of the clear directions in the order dated 19 October, 2010 the Customs Department is not refunding US $ 289250. In particular, he invites our attention to the following portion of the order dated 19 October, 2010:

19. In so far as Writ Petition No. 2976 of 2004 is concerned, the principal relief sought is that of the release of the currency amount of US $ 2,89,250 along with interest thereon @ 18% from the date of seizure until release thereof to the petitioner.

In so far as said relief is concerned, since we have dismissed the Appeals filed by the appellant above named, the above petition would have to be allowed in terms of prayer clause (a). However, the petitioner would have to deal with the said amount in terms of the order of the CEGET as also the order impugned in the above appeals i.e. re-export the said amount with the permission of the RBI. Since the respondents have retained the amount on account of the pending proceedings, we are of the view that the petitioner i.e. Jatin Jhaveri in Appeal No. 64 of 2006 would not be entitled to any interest.

Rule is therefore, made absolute in terms of prayer clause (a) by clarifying that the petitioner would not be entitled to pay interest on the said amount of US $ 2,89,250

Sd/- (R.M. Savant, J.)

Sd/- (V.C. DAGA, J.)

Further order (Date 19 October, 2010)

At this stage the learned Counsel for the Revenue prays that the amount of 2,89,250 US $ which is lying confiscated since the year 1993 and which continues to lie with the Department should not be released to the petitioner Jatin Jhaveri for a period of 8 weeks. In the facts and circumstances of the case, we find the said request to be reasonable. The said amount, therefore, not to be returned to the Petitioner Jatin Jhaveri for a period of 8 weeks from date.

Sd/- (R.M. Savant, J.)

Sd/- (V.C. DAGA, J.)

In view of the above, it submitted that the amount US $ 2,89,250 should be refunded to the applicants.

6. In response Mr. Pradeep Jetly, Counsel appearing for the revenue states that the amount US $ 2,89,250 was seized in the year 1993 and the same was deposited/sold to State Bank of India on 17 March, 1994. The equivalent amount of Rs. 89,32,362 was received by the department from State Bank of India and the same amount was credited into department''s bank account. This very amount of Rs. 89,23,362/- is now being refunded to the petitioner. It was submitted that the US $ being foreign currency was notified in terms of Section 110(1A) of the Customs Act by the Central Government in 1996. In terms of Section 110(1A) of the Act the Central Government may specify the goods or class of such goods to be disposed of by the Proper Officer in such manner as the Central Government may time to time determine after following the procedure. In view of the above, it is submitted that the order dated 12 April, 2012 of the Dy. Commissioner of Customs is in compliance with the directions of this Court dated 19 October, 2010 and calls for no further direction and/or interference.

7. We find that foreign currency as well as Indian currency has been notified as goods u/s 110(1A) of the Customs Act with effect from 11 March, 1996. However, in this case US $ has been sold earlier i.e. in 1994. Besides Section 110(1A) also requires the Proper Officer to dispose of "notified goods in such manner as the Central Government may from time to time to determine..." In spite of our calling upon the revenue to place on record any directions given by the Central Government about the manner in which the seized currency has to be disposed of by the revenue, nothing has been placed before us.

8. Be that as it may, the issue before us is very limited i.e. implementation of the order dated 19 October, 2010 passed by this Court. The Customs Department themselves stated before this Court that the amount of US $ 289250 is lying with them while seeking a stay of the order dated 19 October, 2010. The aforesaid observation has not been disputed by moving any application before the Court or

by filing an appeal before the Supreme Court on merits of the refund of US $ 289250 to the petitioner. In these circumstances, we are not called upon to decide the issue raised by Mr. Pradeep Jetly on behalf of the Customs Department. The Customs Department is bound to implement the order dated 19 October, 2010 of this Court.

9. Even otherwise, the petitioner has not been granted any interest on the amount of refund. It would therefore, be arbitrary and unreasonable to deny the petitioner, both interest on the arrears of refund for the period from 1994 to 2014 on the one hand and the compensation consequential upon variations in the foreign exchange rate between 1994 to 2014 on other hand.

10. In the above circumstances, we direct the Customs Department to refund US $ 289250 as directed by the order of this Court dated 19 October, 2010 within four weeks from today so as to enable the petitioner to export the same as directed by this Court in its order dated 19 October, 2010. Accordingly, the notice of motion is allowed in terms of prayer clause (a).