(2013) 03 MAD CK 0176

In the Madras High Court

Case No : Writ Petition (MD) No. 1677 of 2008

K.N. Thiagarajan APPELLANT

Vs

Commissioner of Customs RESPONDENT

Date of Decision : 26-03-2013

Acts Referred:

Citation : (2014) 299 ELT 139

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : S. Renganathan, for the Appellant; S. Vijaykarthikeyan, Senior Standing Counsel, for the Respondent

Judgement

T.S. Sivagnanam, J.—Heard Mr. S. Renganathan, learned counsel appearing for the petitioner and Mr. B. Vijaykarthikeyan learned Senior Standing Counsel for the respondents. The prayer in the writ petition is for issuance of Writ of Mandamus, to direct the respondents 1 and 5 for payment of interest at the rate of 9% in respect of sale value of the gold which was sold by the Customs Department pursuant to the order of absolute confiscation which was passed.

2. The Commissioner of Customs by order dated 15-11-1999 ordered for absolute confiscation of the 40 gold bars of foreign origin weighing about 4665.65 gms, valued at Rs. 20,60,000/- under Sections 111(d) and (e) of the Customs Act (hereinafter referred to as ''the Act'') and the confiscated car bearing Regn. No. TN-72-A-3004 u/s 115(2) of the Act with an option for redemption against payment of fine of Rs. 1,00,000/- u/s 125 of the Act and penalty of Rs. 5,00,000/- was imposed on the petitioner u/s 112(a) of the Act.

3. The petitioner challenged the order of confiscation and imposition of fine and penalty on various grounds before the Customs, Excise & Gold (Control) Appellate Tribunal. The Tribunal by order dated 12-1-2007 disposed of the appeal with an option to redeem the car on payment of Rs. 20,000/- and reduced penalty to a sum of Rs. 3,00,000/- which was directed to be paid along with a

fine determined by the Commissioner of Customs in respect of the gold bars at the time of redemption. After the order was passed by the Tribunal, the Department filed a miscellaneous petition for rectification of mistake in Miscellaneous Petition No. 23 of 2007. It was contended before the Tribunal that 39 out of 40 gold bars were disposed of by the Department by auction sale in June, 2000 and an amount of Rs. 20,16,734/- was realized after payment of Sales Tax. Further, it was stated that the car was also disposed of during December, 2001 for an amount of Rs. 62,500/- and therefore, the Department sought rectification of the final order passed by the Tribunal dated 12-1-2007. While considering the said miscellaneous petition for rectification, the Tribunal while passing the stay order dated 11-5-2000, noted the sale of gold bars by the Department and the Tribunal was satisfied that the final order passed on an erroneous premise that the gold bars and the car were still in the Department is incorrect and therefore, the order has to be revised. Accordingly, final order was modified by order dated 9-5-2007 [2007 (216) E.L.T. 155 (Tri.-Che)]. The operative portion of the order passed by the Tribunal reads as follows:--

However, now that the department has already disposed of the goods and collected sale proceeds, we are of the view that reasonable amounts of fine and penalty can be realized out of the sale proceeds and the balance amount should be released to the party. For this purpose, learned Commissioner should determine the redemption fine to be paid in lieu of confiscation of the gold bars. This shall be done after giving the appellant a reasonable opportunity of being heard. As regards the car, the question to be considered is whether the fine of Rs. 1 lakh fixed by the Commissioner is reasonable. It is now on record that the car was sold in auction at Rs. 62,500/-. In the circumstances, the fine of Rs. 1 lakh determined by the Commissioner is no longer sustainable. We reduce the quantum to Rs. 20,000/- (Rupees Twenty thousand only). Ld. Commissioner imposed a penalty of Rs. 5 lakhs on the party. It has been pointed out by ld. Counsel that in the case of Saidalavi (supra), a similar penalty was reduced to Rs. 3 lakhs. To maintain consistency, we think, we must allow a similar reduction to the appellant and accordingly, the penalty on him will stand reduced to Rs. 3 lakhs (Rupees Three lakhs only). The Commissioner shall realize penalty and redemption fines as well as duty from the sale proceeds of the goods and return the balance amount to the appellant. The appeal is disposed of in this terms.

4. As per the direction issued by the Tribunal, a revised Order-in-Original (de novo) was issued by the Commissioner on 15-11-2007 by which the Commissioner imposed a redemption fine of Rs. 4,00,000/- on 40 gold bars in lieu of confiscation and since the gold bars are already sold by the Department, the sale proceeds of gold along with one gold bar available as PTD sample shall be released to the party after deducting redemption fine, appropriate duty and penalty and other duties. Pursuant to the said order, the Assistant Commissioner of Customs passed an order on 17-12-2007 stating that an amount of Rs. 12,89,094/- has to be paid by the Department and accordingly, the same was refunded to the petitioner by cheque dated 17-12-2007.

5. It is not in dispute that the said amount paid to the petitioner by way of refund by the Department. Now the claim of the petitioner is that the Department is liable to pay interest at the rate of 9% per annum from the date of the order i.e., 12-1-2007 till the order of the Tribunal on 17-12-2007.

6. From the affidavit filed in support of this writ petition, it is seen that there is no request made by the petitioner to the Department claiming such interest and copy of any such representation has also not been filed in the typed set. Therefore, the only question which falls for consideration is whether the petitioner is entitled to claim interest for the said period at the rate of 9% per annum.

7. Firstly, it has to be noted that the Commissioner of Customs passed an order for absolute confiscation and by virtue of the said order of confiscation, the properties stood vested with the Government and they were free to dispose of the same. The petitioner has challenged the order of absolute confiscation by filing an appeal before the CESTAT. The CESTAT while passing the interim order noted that the gold bars have been sold by the Department in its order dated 11-5-2000. In any event, at the time when the appeal was disposed of either party did not bring to the notice of the Tribunal about the sale of gold bars during May, 2000. This has resulted in the Tribunal issuing certain directions for redemption by its order dated 12-1-2007. Only, after the order was passed by the Tribunal, the Department noticed the mistake and filed a petition for rectification. This application was heard by the Tribunal and the Tribunal recorded a finding that it was aware that the gold bars were already sold by the Department at the time when the interim order was passed. However, since without considering the said fact, the final order was passed, revised orders were passed by the Tribunal. The operative portion of the order passed by the Tribunal dated 9-5-2007 has been referred supra. Thus, by virtue of the revised order, the petitioner was entitled to refund of certain amount as directed by the Tribunal. Therefore, at no point of time, the petitioner made a claim for interest before the Tribunal, though it was an admitted fact that the goods were sold much prior to the order of stay passed by the Tribunal.

8. That apart, after the directions was issued by the Tribunal by passing revised order, order-in-original (de novo) was passed and the petitioner has also received the refund being Rs. 12,89,094/-. In such circumstances, the petitioner having not questioned the sale of the gold bars during the pendency of the appeal, nor made any claim before the Tribunal nor made any representation to the authorities, now cannot seek for interest to be granted for the said period by filing this writ petition.

9. As rightly pointed out by the learned Senior Central Government Standing Counsel appearing for the respondents on the date when the sale was effected the goods in question namely, gold bars stood absolutely confiscated and therefore, as on such date, the petitioner had no subsisting right over the said goods. Furthermore, the Tribunal did not grant any stay of confiscation which

resulted in sale of the gold bars. In view of the above reasons, no relief can be granted in this writ petition. Hence, the writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.