(2008) 09 AHC CK 0145

In the Allahabad High Court

Case No : M. W. P. No. 3274 (M/B) of 2006

Laxman Dayal — APPELLANT

Vs

Commissioner of Central Excise, Allahabad & Anr. — RESPONDENT

Date of Decision : 02-09-2008

Acts Referred:
Gold (Control) Act, 1968 — Section 73

Citation : (2008) 09 AHC CK 0145

Hon'ble Judges : U.K.Dhaon, J and Satish Chandra, J

Final Decision : Allowed

Judgement

1. Heard Ms. Arvind Srivastava, learned counsel for the petitioner and Sri Raj Kumar Singh, the learned Central Government Counsel for the opposite parties.

2. The petitioner being aggrieved by the order dated 1122005 passed by the Central Excise Commissionerate, Allahabad has filed the instant writ petition. The brief facts of the case are that in a raid which was conducted on 1291975 at the house of late Ram Chander at Faizabad by the Customs & Excise Officials, ornaments and primary gold weighing 296 grams were seized under the Gold(Control) Act, 1968(hereinafter referred to as the Act) on the suspicion that it is of foreign origin.

3. Sri Laxman Dayal and others earlier filed a writ petition in this Court which was registered as Writ Petition No. 1833(M/S) of 1980. The said writ petition was partly allowed by the judgment and order dated 642005 and the impugned orders dated 2121976, 3183 1979,3111979 and 1041980 were quashed by this Court and the respondents were directed to provide the benefits of Section 73 of the Act to the petitioner with respect to 296 grams of primary gold.

4. Learned counsel for the petitioner submits that by the impugned order dated 1122005, the respondents are demanding Rs. 2,23,480/ from the petitioner as redemption fine for redeeming 296 grams of primary gold although as per the provisions of Section 73 read with Section 2(v) of the Act, the fine can be

charged only on the basis of the market price which was prevalent at the time of seizure and not the current price.

5. The learned Central Government Counsel appearing on behalf of the respondents submits that the petitioner has an alternative remedy before the Customs, Excise & Service Tax Appellate Tribunal. He further submits that there is no illegality in the impugned order dated 1122005.

6. We have considered the submissions made by the learned counsel for the parties and gone through the record.

7. The alternative remedy is not an absolute bar and the High Court under Article 226 of the Constitution of India can entertain a petition to do justice and to prevent injustice between the parties. In Writ Petition No. 1833(M/S) of 1980, a specific direction was issued by this Court to the respondents to consider the case of the petitioner in accordance with Section 73 of the Gold (Control) Act.

8. It is admitted case of the parties that the raid was conducted at the house of the father of the petitioner on 1291975 by the Customs & Excise Officials and ornaments and primary gold weighing 296 grams were seized under the Gold(Control) Act, 1968 on the suspicion that the primary gold is of foreign origin.

9. The petitioner earlier filed a a writ petition in this Court which was registered as Writ Petition No. 1833(M/S) of 1980. The said writ petition was partly allowed by this Court and the respondents were directed to consider the petitioner''s case keeping in view the provisions of Section 73 of the Act for redeeming 296 grams of primary gold.

10. By the impugned order dated 1122005, the respondents have assessed the fine to the tune of Rs. 2,23,480/ on the basis of the current market value of the primary gold.

11. Section 73 of the Gold (Control Act), 1968 reads as under:

"73. Power to give option to pay fine in lieu of confiscation Whenever any confiscation is authorized by this Act, the officer adjudicating it may, subject to such conditions as may be specified in the order adjudicating the confiscation, give to the owner thereof an option to pay in lieu of confiscation such fine, not exceeding the value of the thing in respect of which confiscation is authorised, as the said officer thinks fit."

12. The word "value" has been defined in Section 2(v) of the Act which reads as under:

" 2(v) "value", in relation to primary gold, article or ornament, means,

(i) when the gold is seized under this Act, the market price of such gold as on the date of the seizure thereof.

(ii) when the gold is not available for seizure, the market price of such gold as on the date on which the notice referred to in section 79 is issued."

13. In accordance with Section 73 read with Section 2(v) of the Act, the respondents have to fix the redemption fine on the primary gold which was seized on 1291975 at the rate which was prevailing at the time when the gold was seized. By the impugned order, the fine has been assessed at the current market value of the primary gold, which is not permissible under law. The impugned order is legally not sustainable as law permits the redemption fine at the rate prevalent when the goods were seized.

14. In the result the writ petition succeeds and is hereby allowed and a writ in the nature of mandamus is issued directing the respondents to refix the redemption fine for redeeming 296 grams of primary gold which was seized by the Customs & Excise Authorities on 12th September, 1975 on the basis of the observations made above, within six weeks from the date a certified copy of this order is produced.

15. Under the circumstance, there shall be no order as to costs.