

(1994) 03 MAD CK 0090

In the Madras High Court

Case No : Writ Petition No. 1091 of 1986

Meena A. Bharwani

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-03-1994

Acts Referred:

Customs Act, 1962 — Section 111, 112, 131

Citation : (1994) 72 ELT 17

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Advocate : Mrs. Sunitha, for M/s. V. Aravamudhan, S. Raghunathan and C.A. Sundaram, for the Appellant; Shri K. Ilias Ali, Sr. Central Govt. Standing Counsel, for the Respondent

Judgement

1. The petitioner had come to India to show her new-born child which was only about seven months old to her parents. It is stated that her husband is well placed in life and she was carrying sufficient funds for her stay in India with her parents. The journey from Tokyo to Madras had taken an unduly long time and the petitioner, had been re-routed through Colombo due to certain unavoidable reasons. At the time when she arrived at the Madras Air-Port, she is said to have been in a condition of exhaustion and was in a hurry to get through the Customs. She was wearing and having in the baggages, Gold and Diamond studded jewellery and had not declared the same to the authorities. According to the petitioner there was no ulterior motive for the non-declaration of the jewellery. By an order dated 7-7-1989, the Additional Collector of Customs confiscated the Gold Jewellery weighing 52 grams valued at Rs. 4,680/- and diamond studded jewellery valued at Rs. 25,400/- u/s 111 (d) and (i) of the Customs Act, 1962 (hereinafter called "the Act"). He also imposed a penalty of Rs. 6,000/- on the petitioner, u/s 112 of the Act. It is to be noticed here that the petitioner did declare certain jewelleries, but the subject items had not been declared. It was only on an examination of the petitioner's baggage that the above jewelleries were found out. Against the order of the Additional Collector dt. 7-7- 1989 an

appeal was filed to the erstwhile Central Board of Excise and Customs. The Central Board having confirmed the order a revision petition was filed to the Government of India. By virtue of Section 131(b) of the Act a revision petition was transferred to the Customs, Excise and Gold (Control) Appellate Tribunal. By an order dt. 14-10- 1983, the Tribunal allowed the jewellery to be cleared on payment of fine to the tune of Rs. 7,500/-, in lieu of confiscation. The penalty was reduced from Rs. 6,000/- to Rs. 1,500/-. On 26-11-1983, the petitioner wrote to the second respondent seeking return of the jewellery. By a letter dated 2-1-1984 the second respondent wrote back saying that the jewellery was not available for release, because the gold had been deposited in the Govt. of India Mint and the diamonds had been sold in public auction. The letter further disclosed that they were awaiting the value of the sale proceeds to find out whether any amount was refundable to the petitioner. By a further letter dt. 23-2-1984, the petitioner was informed that the total sale proceeds amounted at Rs. 34,439.35. The duty recoverable on the jewellery worked out to Rs. 35,160/-. Taken along with the redemption fine of Rs. 7,500/-, no amount was refundable to the petitioner. It was also noticed in the letter that out of the personal penalty of Rs. 6,000/- a refund had already been made to the extent of Rs. 4,500/-, in compliance with the order of the Tribunal. The petitioner thereupon issued a notice on 3-5-1984 seeking return of the jewellery. Unable to get any response, the petitioner has filed this writ petition seeking the issue of writ of mandamus to direct the respondents to give effect to the order of the Tribunal dated 14-10-1983. The writ petition was filed on 10-2-1986.

2. A counter affidavit has been filed. The material facts leading to the order of the Tribunal are not disputed. The value of the jewellery as stated in the affidavit of the petitioner is disputed. It is further stated that the gold jewellery had been disposed of in July, 1980 itself. It is only on 25-7-1983 that the second respondent received a letter from the Tribunal, enclosing a copy of the grounds of appeal. The respondents had informed the Tribunal about the disposal of the jewellery by a communication dated 18-8-1983. Prior to this letter the respondents had also informed the Government of India, by a letter C. 6/34/80, dated 10-9-1980, stating that the jewellery had been disposed of. This is because the revision petition was first filed before the Government and the Government was therefore informed that the jewellery was not available. It is under these circumstances that the question has to be decided as to whether the petitioner is entitled to any relief.

3. In support of their arguments learned counsel for the respondents has cited before me a decision in 1985 ECR 1242. The ratio of the said decision rendered by the Tribunal is as follows :-

"The contention of Shri Raichandani that the vessel could not be sold by the Customs because of the pendency of the appeal appears untenable. Shri Raichandani was unable to point out any provision of law which precludes or prohibits the Customs from selling the vessel which was ordered to be confiscated during the pendency

of the appeal. It is not the case of Shri Raichandani that there had been an order of stay by a proper authority and that the Customs had ignored the stay order and sold the vessel in public auction."

As against this stand of the respondents, learned counsel for the petitioner cites the judgment of the Kerala High Court in *K. Suryakumar v. Union of India* (O.P. No. 7198 of 1981, dated 7-12-1982). That judgment in my opinion, does not in any way support the case of the petitioner. That was not a case where the jewellery had been disposed of, by the Customs Department. That was a case where the jewellery was available and there was only a delay in paying redemption fine and the court directed the return of the jewellery by excusing the delay in filing the redemption fine. It is next argued that if the gold and jewellery had been disposed of the petitioner is entitled to the value of the same on the basis of the current market rates. For this purpose, reference is made to *Union of India (UOI) and Others Vs. Shambhunath Karmakar and Others*, . It is also contented that there is no question of demanding duty because the Tribunal has allowed the return of the jewellery on payment of fine of Rs. 7,500/-. The petitioner says that the present market value of the gold and diamond studded jewellery seized from the petitioner works out to Rs. 4,51,572.25. If the jewellery is not available the petitioner seeks payment of the said amount.

4. So far as actual return of the jewellery is concerned, I am unable to find fault with the respondents for disposing of the same, prior to the order of the Tribunal dated 14-10-1983. This is because the respondents had informed the Government of India on 10-9-1980 itself about the disposal of the jewellery. Similarly, they had also informed the Tribunal on 18-8-1983. Therefore, the Tribunal should have been careful in passing an order directing the return of the jewellery on payment of a redemption fine of Rs. 7,500/-. In other words, the Tribunal should have been passed an appropriate order taking note of the disposal of the jewellery by the respondents. In this connection, the view expressed by the Bombay Tribunal in 1985 ECR 1242 is quite correct and I approve of the same. A party who is seeking redress in a court of law or Quasi Judicial Authority should be vigilant in protecting his or her rights. Having kept quiet after the confirmation of the order of the Additional Collector dated 7-7-1989 by the Central Board on 6-3- 1990, the petitioner has to blame herself for the loss of the jewellery. Learned counsel for the respondents placed before me the records to show that the sale of the diamonds and other precious stones at Bombay was in accordance with the Rules and Regulations. Under such circumstances, I am unable to reject the contention that only a sum of Rs. 34,439.35 was realised as and by way of sale proceeds. But I am unable to understand as to how the second respondent is demanding a duty at the rate of 120 per cent worked out to Rs. 35,160/-. A reference to the operative portion of the order of the Tribunal does not warrant the imposition of any duty as claimed by the second respondent. The operative portion is as follows :-

"Under the circumstances we order that the jewellery that stands confiscated be

allowed to be cleared on payment of a fine in lieu of confiscation of Rs. 7,500/-. We also order that the personal penalty be reduced to Rs. 1,500/-. In the circumstances of the case, the request for re-export is disallowed."

5. The petitioner had sought for the return of the jewellery by a letter dated 26-9-1983. Therefore, in my opinion, when the sale value became known to the second respondent, he should have returned the same after deducting redemption fine of Rs. 7,500/- alone. In other words, the second respondent should have returned a sum of Rs. 26,939.35 to the petitioner even on 23-2-1984 when he wrote the letter O.S. 848/79 N.T. CELL No. 253/83. So far as the penalty is concerned it is not disputed that out of the sum of Rs. 6,000/- paid by the petitioner, a sum of Rs. 4,500/- has already been refunded. Therefore, I am of the opinion that the respondents have no explanation for not repaying the sum of Rs. 26,939.35 for all these days from 23-2-1984. In my opinion, the petitioner is not entitled to the market value of the goods as on date, because I have already found that the sale of the jewellery by the respondents was in accordance with law and cannot be faulted. The only relief that can be given to the petitioner is to direct the respondents to refund the said sum of Rs. 26,939.35. The question is whether interest should be allowed on this amount. I have already hold that the amount was payable from 23-2-1984. Therefore, certainly, the petitioner is entitled to the interest from the said date. I therefore, direct the respondents to refund a sum of Rs. 26,939.35 with interest at 12 per cent per annum from 23-2-1984 within 12 weeks from today. The writ petition is allowed in the above terms. There will, however, be no order as to costs.