(1993) 01 MAD CK 0044

In the Madras High Court

Case No : Writ petition No. 6158 of 1988

M.M.K. Mohamed Ibrahim — APPELLANT

Vs

The Assistant Collector of Central Excise — RESPONDENT

Date of Decision : 13-01-1993

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1993) 42 ECC 289

Hon'ble Judges : Venkataswami, J

Bench : Single Bench

Judgement

Venkataswami, J.—This petition under article 226 of the Constitution of India, is for the issue of a writ of mandamus, directing the respondent to restore and return the 1968 CJ.-4 Model Jeep bearing Registration No. MSQ 8308 having Serial No.67707, Engine No.680447 and Chassis No. C J.4-4-6804407 along with its stepney tyre as on the same condition when it was seized as per the mahazar dated 17.2.1977.

2. Brief facts are the following:

In the course of seizure of nine gunny bags of cloves from the pits of the "thope" belonging to the petitioner, the jeep in question was also seized on 17.2.1977. In the adjudication proceedings, while the petitioner was relieved of his personal liability, the jeep was subjected to absolute confiscation by an order of the first Authority dated 14.12.1979. On appeal, the Central Board of Excise and Customs, by its Order dated 13.6.1980, directed the release of the jeep on payment of a sum of Rs. 5,000/- in lieu of confiscation. On further revision, the Government of India, by order dated 8.10.1987, has reduced the fine from Rs. 5,000/- to Rs. 2,500/-. Before the disposal of the first appeal, in the meanwhile, the jeep was sold in public auction on 25.5.1980 for a sum of Rs. 9,500/-. The respondent informed the petitioner by letter dated 5.12.1980 about the sale of the jeep in public auction and the willingness of the Department to pay the balance of consideration after deducting the fine amount. The petitioner, in the light of the further order in revision, and after paying the fine of Rs. 2,500/- has demanded the return of the jeep in this writ petition.

3. Learned Counsel for the petitioner contends that while the order of confiscation was on 14.12.1979, the respondent could have waited for some more time before selling the jeep in public auction. No notice was given to the petitioner before the jeep was sold in public auction. The petitioner is, therefore, entitled to the return of the jeep in the same condition as it was seized. Alternatively, he contended that the petitioner is, in any event, entitled to interest from the date of sale till date of payment on the value of the sale consideration as the revenue had the benefit of the amount. In support of the alternative contention, he placed reliance on a judgment of the Supreme Court in Hardeo Kaur and others v. Rajasthan Stale Transport Corporation and Anr. reported in 1992 Supreme Court Cases (Criminal) 394.

4. Mr. K. Jayachandran, learned Additional Central Government Standing Counsel submitted that the respondent did not receive any intimation about the filing of the appeal by the petitioner, and in the absence of such an intimation, the respondent cannot be blamed for selling the vehicle in public auction after observing all the formalities. He also contended that once an order for absolute confiscation was made, the jeep becomes the property of the Revenue, and there was no need to issue any notice to the petitioner before the jeep was sold in public auction. He also submitted that the petitioner could have received the amount when he was informed about the sale and the willingness of the Department to return the balance amount, and having failed to do so, he was not entitled to any interest.

5. I have considered the rival submissions.

6. On the facts and circumstances of the case, I do not find any justification for ordering return of the jeep in question.

7. On the question of awarding interest, I find that there is justification. The respondent sold the jeep in public auction on 25.5.1980, even before the expiry of the appeal time and further time for condoning the delay. At the same time, the petitioner also was not diligent in informing the Department about the filing of the appeal on 11.3.1980. Therefore, both parties are at fault to a certain extent. The respondent had the benefit of the amount, and this cannot be disputed. Therefore, the respondent has to return the money with interest. In the decision cited by the learned Counsel for the petitioner, namely, 1992 Supreme Court Cases (Crl.) 394 (supra), the Supreme Court, in a motor accident claim, has observed as follows:

We are of the view that deduction of 1/3rd out of the assessed compensation on account of lump sum payment is not justified. The accident took place in July, 1977 and the litigation has come to an end, hopefully, today, 15 years thereafter. This Court in Motor Owners'' Insurance Company Ltd. v. Jadavji Keshevji Modi held that the delay in the final disposal of motor accident compensation cases, as in all other classes of litigation, takes the sting out of the laws of compensation and added to that the monstrous inflation and the consequent fall in the value of rupee takes the compensation demanded years ago, less than quarter of its value when it is received after such a long time. In Manjushri Raha v. B.L. Gupta this Court awarded compensation by multiplying the life expectancy without making any deductions. With the value of (sic) idling due to high rate of inflation, there is no justification for making deduction due to (sic)payment. We, therefore, hold that the courts below were not justified in making lump(sic) this case.

Bearing that principle in mind, I direct the respondent to(sic) the money within eight weeks from this date with interest at 12% per annum on Rs. 9,500/- being the value of the sale proceeds of the jeep sold on 25.5.1980. The interest is payable from the date of sale, namely, 25.5.1980 till date of payment. The writ petition is disposed of accordingly. No costs.

