(2011) 11 BOM CK 0134

In the Bombay High Court

Case No : Writ Petition No. 1742 of 2011

Mr. Chandru P. Jethwani — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 21-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 1 ALLMR 783 : (2012) 276 ELT 440 : (2012) 2 MhLj 191

Hon'ble Judges : D.Y. Chandrachud, J;A.A. Sayed, J

Bench : Division Bench

Advocate : B.J. Raichandani, for the Appellant; Madhavi Tavanandi with Ms. Anamika Malhotra, for the Respondent

Judgement

Dr. D.Y.Chandrachud, J.—Rule; with the consent of Counsel for the parties returnable forthwith. With the consent of Counsel and at their request the Petition is taken up for hearing and final disposal.

2. A search took place of the premises of the Petitioner by the officers of the SIIB Customs, Mumbai on 21 March 1997 during the course of which certain foreign currencies together with Indian currency in the amount of Rs. 5.90 lakhs were seized. A notice to show cause was issued to the Petitioner by the Assistant Director in the Enforcement Directorate. An order of adjudication was passed on 19 May 1998 by which the foreign currencies seized from the premises were confiscated and a penalty of Rs. l lakh was imposed. The adjudicating authority, however, held that there was no concrete material evidence on the record to establish that the Indian currency in the amount of Rs. 5.90 lakhs represented the proceeds of foreign currency. Consequently, the Indian currency was ordered to be released to the Petitioner after obtaining no objection of the Income Tax authorities.

3. The order of the adjudicating authority attained finality on 4 July 1998 upon the expiry of the period of limitation to file an appeal. The ITO (Investigation) Unit-III, Mumbai issued a no objection to the Assistant Directorate in the

Enforcement Directorate for the release of an amount of Rs. 5.90 lakhs after adjustment of the penalty of Rs. 1 lakh.

4. On 3 August 2000, 25 February 2001 and 8 January 2002 communications were addressed by and for and on behalf of the Petitioner for the release of the Indian currency after adjustment of the personal penalty of Rs. 1 lakh. On 1 February 2002, the Petitioner was informed by the Assistant Director (Administration) that the matter had been taken up with the Deputy Legal Adviser at New Delhi for clearance and the amount would be cleared as soon as clearance is received. Thereafter, since nothing happened, the Petitioner addressed representations through his Advocate on 25 September 2007, 5 November 2007 and 22 February 2008. On 4 March 2008, the Assistant Director called the Petitioner for a personal hearing. Once again reminders were addressed by the Petitioner on 5 February 2009 and 8 June 2009. On 9 July 2009, the Petitioner was informed by the Assistant Director that a refund of Rs. 4.90 lakhs was being examined once again. The Petitioner''s Advocate addressed notices dated 1 April 2010 and 8 April 2010. The petitioner was informed on 3 May 2010 to intimate the details of the PAN number and the Assessing Officer of the Income Tax Department to enable the claim to be processed. The Petitioner responded by a letter dated 22 July 2010. On 3 August 2010, the Petitioner was informed that no objection of the Income Tax authorities dated 12 May 2000 had been considered for processing the release of the amount, which it was stated, would be done shortly. The Petitioner was requested to bear with the Department for the delay. The Petitioner''s Advocate addressed a notice dated 13 August 2010 in response to which he was informed by a letter dated 18 August 2010 that he may contact the Assistant Director (Administration) for the release of the Indian currency. Finally a notice was addressed on 24 August 2010. On 4 October 2010 the Petitioner was informed that a Pay Order for Rs. 4.90 lakhs dated 25 September 2010 was ready and that the Petitioner could collect it after producing proof of identity. The Petitioner claimed interest by his notices dated 21 October 2010, 29 October 2010, 20 December 2010 and 4 August 2011 to which there is no reply.

5. Admittedly, the Petitioner was entitled to the release of the Indian currency of Rs. 5.90 lakhs after adjustment of a personal penalty of Rs. 1 lakh under the order of the adjudicating authority dated 19 May 1998. The order was not questioned in appeal either by the Petitioner or by the Department. The Department was duty bound to make a refund within a reasonable period. The Department failed to do so for nearly 12 years thereafter for which there is not even a plausible explanation in the affidavit in reply. In the reply, it has been stated that the Petitioner should be relegated to the remedy of filing a suit and that the Foreign Exchange Regulation Act, 1973 does not provide for payment of interest in such circumstances. We are of the view that the conduct of the Enforcement Directorate is completely contrary to law. The Enforcement Directorate was duty bound to refund the amount which was seized from the premises of the Petitioner after adjusting the personal penalty in terms of the

order passed by the adjudicating authority. Detaining monies of a citizen for ten years is totally violative of the rule of law. The writ Court in the exercise of its jurisdiction under Article 226 of the Constitution has sufficient powers in such cases to award interest.

6. We accordingly dispose of this petition by directing the Respondents to pay interest on the amount of Rs. 4.90 lakhs from the expiry of the appeal period of 45 days from the date of the order dated 19 May 1998 until 4 October 2010 when the Petitioner was informed that a Pay Order in the amount of Rs. 4.90 lakhs was ready. Interest shall be computed at the rate of 9% per annum and payment s hall be made to the Petitioner no later than within a period of two months from today. We also direct that the Director in the Enforcement Directorate shall cause an enquiry to be made of the reasons which led to the delay in the disbursal of the amount due and payable to the Petitioner and in the event that any negligence is found on the part of any officer, he shall take necessary action in accordance with law. We also direct that immediate administrative action shall be taken, laying down clear guidelines for observance to ensure that such lapses do not occur in the future.

7. The Petition is accordingly disposed of.

