(1991) 01 DEL CK 0080

In the Delhi High Court

Case No : Civil Writ Appeal No. 786 of 1990

Roshan Lal Girdhari Lal and Another — APPELLANT

Vs

Collector Central Excise — RESPONDENT

Date of Decision : 29-01-1991

Acts Referred:

Citation : (1991) 43 DLT 535

Hon'ble Judges : Milap Chand Jain, C.J;Arun Kumar, J

Bench : Division Bench

Advocate : A.N. Haksar, S.K. Bansal and Madan Lokur, for the Appellant;

Judgement

M.C. Jain, C.J.

(1) By this writ petition, the petitioners seek a direction to respondent No. 1 to return to the petitioners 22 gold guineas, weighing approximately 174.500 gms. seized from the business premises of the petitioners.

(2) It may be stated that in connection with importing of gold guineas adjudication proceedings were initiated and the Collector of Customs, New Delhi by his order dated 17.2.1983 ordered confiscation of 22 gold guineas.

(3) In appeal, the Tribunal set aside the order of the Collector and remanded the case back to the Collector Central Excise, New Delhi for de-novo adjudication after affording the petitioners a reasonable opportunity to be heard in person to advance arguments and to submit such evidence as is admissible under law.

(4) Learned Counsel for the respondent stated that after the remand order by the Tribunal, no action was taken by the Collector of Customs. The Tribunal passed the order on 6th March, 1987. The petitioners made representation for return of 22 guineas as no fresh notice was issued within 6 months of the date of the order for de-novo adjudication.

(5) The relevant provision of Section 79 of the Gold Control Act 1968 reads as under :

"S.79. Giving of an opportunity to the owner of gold, etc. No order of adjudication of confiscation or penalty shall be made unless the owner of the gold. conveyance, or animal or other person concerned is given a notice in writing- (i) informing him of the grounds on which it is proposed to confiscate such gold, conveyance or animal or to impose a penalty ; and, (ii) giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the confiscation or imposition of penalty mentioned therein and, if he so desires, of being heard in the matter. Provided that the notice and the representation referred to in this section may, at the request of the owner or other person concerned, be oral; Provided further that where no such notice is given within a period of six months from the date of the seizure of the gold, conveyance of animal or such further period as the Collector of Central Excise or of Customs may allow, such gold, conveyance or animal shall be returned after the expiry of that period to the person from whom possession it was seized. Explanation - Where any fresh adjudication is ordered under this Act, the period of six months specified in the second proviso shall be computed from the date on which such order for fresh adjudication is made".

(6) It would appear from the perusal of the above provision that period of six months specified in the second proviso shall be computed from the date on which order for fresh adjudication is made. Section 79 contemplates giving of an opportunity to the owner of the gold, conveyance or animal before any order of adjudication of confiscation or penalty is made. Notice in writing is required to be given informing the owner of the gold, conveyance or animal or any person concerned the grounds on which it is proposed to confiscate such gold, conveyance or animal or to impose penalty. After issuance of such notice, informing the grounds, a reasonable opportunity of making a representation is further required to be given.

(7) The second proviso provides that where no such notice is given within a period of six months from the date of the seizure of the gold, conveyance or animal or such further period as the Collector of Central Excise or of Customs, may allow, such gold, conveyannce or animal shall be returned after the expiry of the said period, to the person from whose possession it was seized.

(8) The counsel for the respondent contended that the notice issued u/s 79 has not been quashed by the Tribunal and the Tribunal has simply set aside the order of the Collector confiscating the gold and remanded the matter back to the Collector for de-novo adjudication, as such, to such an order where notice has not been quashed, Explanation to Section 79 is not attracted. It is true that notice issued by the Collector u/s 79 has not been quashed but the Tribunal has ordered de-novo adjudication. From the language of the Explanation, it would appear that the period of six months specified in the second proviso is required to be computed from the date on which the order for fresh adjudication is made. This language of the Explanation does not imply that a Fresh notice is required to

be given when fresh adjudication is ordered. Admittedly, the Tribunal has ordered fresh adjudication and a period of six months has to be computed from the date of the order of the Tribunal. The question is when notice u/s 79(i) is not quashed fresh adjudication is ordered, fresh notice is at all necessary. In our opinion, fresh notice is not necessary. There are two fold requirements of Section 79. One notice informing the grounds for the proposed confiscation and second giving reasonable opportunity of making a representation in writing. In the present case, first requirement was fulfillled. For non observance of the second requirement, order of adjudication has been set aside by the Tribunal and remitted the matter with the aforesaid directions. However, in the present case, as no action has been taken by the Collector Customs after setting aside of the order of adjudication for almost about, four years, we are inclined to order that the gold guineas be returned to the owner. Accordingly, the writ petition is allowed and the respondent No. 1 is directed to return 22 gold guineas weighing about 174.500 gms. to the petitioner, within a period of three months. However, the adjudicating authority would be free to decide the adjudication proceedings.