
(2010) 08 BOM CK 0028
In the Bombay High Court
Case No : Writ Petition No. 1768 of 1998

Rostam Parvaresh

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 04-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 183 ECR 51 : (2010) 259 ELT 342

Hon'ble Judges : V.C. Daga, J; S.J. Kathawalla, J

Bench : Division Bench

Advocate : S.N. Kantawalla and N.M. Shah, for the Appellant; P.S. Jetly and R.B. Pardeshi, for the Respondent

Judgement

1. Heard learned Counsel for the parties.
2. This petition, filed under Article 226 of the Constitution of India, is directed against the order dated 12th February, 1998 passed by the Joint Secretary to the Government of India whereby the order passed by the Commissioner of Customs (Appeals) dated 9th October, 1997 is modified and the Indian currencies equivalent to 20,000 US\$ covered under CDF as Travelers cheques is ordered to be released with direction to pay fine to the extent of 25% thereof leaving rest of the currencies absolutely confiscated as ordered by the original authority vide its order dated 12th September, 1996.
3. Mr. Kantawalla, learned Counsel for the Petitioner raised a sole contention that the Revisional Authority under the impugned order failed to consider a specific contention raised by the Petitioner based on the various judgments of the Appellate Authority as well as that of the Revisional Authority, wherein, the entire confiscated currencies have been ordered to be released on payment of redemption fine as such impugned order needs to be set aside and that the matter needs to be remitted back to the Revisional Authority for consideration afresh.

4. Mr. Kantawalla, while reiterating the above contention, pointed out the specific contention raised in the written submission filed before the Revisional Authority and demonstrated absence of consideration thereof in the impugned order.

5. Per contra, Mr. Pardeshi, learned Counsel for the Respondent tried to justify the order on merits but could not point out any consideration by the Revisional Authority to the aforesaid contention raised by Mr. Kantawalla.

6. Having heard the rival contentions and having independently examined the impugned order, we could not find any consideration of the contention raised by the Petitioner. It is not in dispute that the Petitioner had raised a specific contention as pointed out by Mr. Kantawalla before the Revisional Authority. It is needless to mention that it was obligatory on the part of the Revisional Authority to consider the submission made by the Petitioner. It was open for the Revisional Authority either to accept or reject the submission made by the Petitioner for the reasons recorded. The non-consideration of the submission by the Revisional Authority, by itself can be a ground to set aside the impugned order. Non consideration of the contention demonstrates not only non-application of mind but omission to consider relevant submission, which results in miscarriage of justice.

7. In the result, impugned order is set aside. The Revision Application is remitted back and restored to the file of the Revisional Authority for consideration afresh so as to consider the issue raised by the Petitioner as pointed out hereinabove. The other findings on merits are confirmed. The Revisional Authority shall consider the issue relating to the release of entire foreign currencies on payment of redemption fine on its own merits.

8. We expect the Revisional Authority to decide the remanded proceeding as expeditiously as possible at any rate within a period of 3 months from the date of receipt of copy of this order.

9. Rule is made absolute in terms of this order with no order as to costs.