(2025) 03 DEL CK 0979

In the Delhi High Court

Case No : Writ Petition (C) No. 2666 Of 2025 & Civil Miscellaneous Petition No. 12739 Of 2025

Zhinet Banu Nazir Dadany APPELLANT

Vs

Commissioner Of Customs New Delhi RESPONDENT

Date of Decision : 03-03-2025

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2025) 03 DEL CK 0979

Hon'ble Judges : Prathiba M. Singh, J;Rajneesh Kumar Gupta, J

Bench : Division Bench

Advocate : D S Chadha, Harsimran Kaur, Prabjyoti K Chadha, Harpreet Singh

Final Decision : Disposed Of

Judgement

PrathibaM. Singh, J

1. This hearing has been done through hybrid mode.

2. The present petition has been filed under Article 226 of the Constitution of India, seeking enforcement of the order dated 17th May, 2019 passed by a co-ordinate bench of this Court in W.P. (C) 4606/2018.

3. The Petitioner, who is a Kenyan National, had sought return of gold weighing about 3732.48 gms, which was brought by her while travelling to India. The Customs had seized the same on 05th January, 2015 at I.G.I Airport, New Delhi. The Petitioner was not served a Show Cause Notice for six months after the seizure. The said seizure was accordingly challenged by her in W.P. (C) 4606/2018.

4. Vide a detailed final order dated 17th May, 2019, a Coordinate Bench of this Court had directed refund of the value of the gold detained by the Department. The operative portion of the said order reads as under:

"23. In the present case with the seized material not being perishable, being gold bars, there was no reason for the Respondents to have hurriedly disposed it off and that too without notice to the Petitioner. When it was plain that even the SCN was not served upon the Petitioner, there was no reason to proceed with disposal of the seized gold without notice. It also appears that the Respondents hurriedly went ahead and passed an adjudication order more than four years after the gold was seized only after the present petition was filed. As pointed out by the Petitioner, during the time when the proceedings were in progress before the criminal court and the Petitioner was also attending those proceedings, no attempt was made to serve a copy of the SCN upon her there. The entire manner in which the Respondents have proceeded to pass the adjudication order and also dispose of the gold without notice to the Petitioner leaves no doubt that not only the disposal of the seized gold, but the adjudication order as well, are both unsustainable in law.

24. Accordingly the adjudication order dated 15th January, 2019 is hereby set aside. As far as the return of the seized gold is concerned, the Court has been presented with a fait accompli, with the Respondents already having hurriedly disposed of the said gold. Mr. Satish Aggarwala on instructions states that the proceeds collected during the auction were equal to the value of the gold being an amount of Rs. 93,34,783/-.

25. The Court accordingly directs that the Respondents will refund to the Petitioner the aforementioned sum of Rs. 93,34,783/- (or the precise amount recovered by the Respondents by auction/sale proceedings) not later than 30th June 2019 failing which the Respondents will pay simple interest at 6% p.a. on the said sum for the period of delay.

26. The petition is allowed in the above terms. The application is disposed of. It will be open to the Petitioner to seek other remedies in relation to any further grievance she may have in accordance with law."

5. This judgment was challenged by the Department in SLP(C) 14603/2019 titled Union of India &Anr. v. Zhinet Banu Nazir Dadany. The matter was, referred to the Lok Adalat and on 29th July, 2024, the following order was passed by the Supreme Court Special Lok Adalat:

"1. The dispute between the parties has been referred for determination to the Lok Adalat.

2. The tax effect of the subject matter of the special leave petition is falling below the threshold contained in the circular dated 22 August 2019 of the Central Board of Indirect Taxes and Customs.

3. The special leave petition is disposed of as not pressed.

4. Court fee be refunded as per rules."

6. The grievance of the Petitioner is that after the said order of the Supreme Court Special Lok Adalat, the Petitioner had again made a representation to the

Department. A deficiency memo dated 18th September 2024 was raised by the Department, which was also cleared vide letter dated 4th October, 2024. It is the case of the Petitioner that even repeated reminders has not elicited any refund from the Department. Accordingly, the present petition has been filed by the Petitioner.

7. Mr. Harpreet Singh, ld. Senior Standing Counsel for the Department has appeared and the matter was passed over at his request in the morning in order to seek instructions. On the second call, ld. Counsel submits that the refund, in terms of the order dated 17th May, 2019, would be effected within two weeks.

8. The same is opposed by the ld. Counsel for the Petitioner on the ground that the market value of the detained gold today would be substantially higher. The Petitioner has been put to unnecessary harassment and financial loss due to the actions of the Department.

9. The chronology of events narrated above would show that there can be no justification for the long delay in non-payment by the Department, especially after the SLP(C) 14603/2019 was disposed way back on 29th July, 2024.

10. Submission made by the Mr. Harpreet Singh, ld. SSC for the Department is accepted by the Court that the amount would be paid with interest, as directed, within two weeks.

11. It is made clear that if the amount is not paid by the 25th March, 2025, the Department would be liable to pay to the Petitioner the market value of the detained gold as on, 29th July, 2024 when the Supreme Court had dismissed the SLP(C) 14603/2019 along with simple interest at 6% p.a. on the said sum for the period of delay from 29th July 2024.

12. The petition is disposed of in the above terms. All pending applications, if any, are also disposed of.

13. List for compliance on 9th April, 2025.

14. Order dasti.