

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP(C) 10883/2009

Date of Decision: 6th November, 2009

M/S PATEL RAJESH KUMAR ARVIND KUMAR & ANR.
..... Petitioners

Through Mr. R.K. Sinha and
Dr. Prabhat Kumar, Advs.

versus

UNION OF INDIA AND ORS. Respondents

Through Ms. P.L. Bansal with
Ms. Anshul Sharma, Advs.
for Respondent No.1 & 2.
Ms. Shawana for
Mr. Salim Ahmed, Adv. for
Respondent No. 3.

CORAM:
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether reporters of local papers may be Allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

J U D G M E N T

A.K. SIKRI, J (ORAL):

1. The present writ petition has been filed by the Petitioners, who claimed to be *Angadia* (courier), for release of four gunny bags which were seized from them at Old Delhi Railway Station. Their case is that the custody of the goods was given to them by the respective owners and they were to book the same to Ahmadabad by Ashram Express Train.

2. As per the Respondents, information was received in the Information Wing on 17th June, 2008 from SHO, Police Station-Old Delhi Railway Station that they had intercepted three persons namely Sh. Shanti Lal, Sh. Ukkaji and Sh. Govind on 16th June, 2008 with four gunny bags containing silver/gold jewellery, bricks and gold biscuits. As per the information the aforesaid three persons were carrying those four gunny bags for sending them by train to Ahmadabad through lease holder of brakevan in Ashram Express. Since they failed to produce the bills/challans/builty of the goods carried by them, the police authorities took the goods in their custody and passed on the information to the Investigation Wing of the Income Tax Department. After the receipt of this information, a team was sent to Old Delhi Railway Station to verify the facts and submit the report. Since the said three persons could not produce bills/challans/builty receipts, prima facie it was found that the goods remained unexplained and accordingly warrant of authorization under Section 132A(1) of the Income Tax Act was issued and goods/cash was requisitioned from SHO, Police Station-Old Delhi Railway Station vide Panchnama dated 17th June, 2008. Before taking the delivery of the goods, these were valued by the Government approved valuer on 17th June, 2008 and thereafter, SHO handed over goods/documents to the Department.

3. The Petitioners herein requested for handing over the said items to them on the ground that they were merely couriers. It is also stated in the writ petition that the employee of the Petitioner Sh. Govind also attended the office of the Assistant Director (Investigation) as and when called and produced the books of

accounts and other required documents to show that he was merely a courier. The names of the persons to whom the goods in fact belong, were given which are M/s Patel Rajesh Kr. Arvind Kumar, M/s Yashodra Jewellers and Manoj. According to the Petitioners even when the receipts and bills relating to the persons to whom the goods belong were furnished to the Income Tax Department, the Income Tax Department has not released the goods. It is also stated that statement of Sh. Govind was recorded on 19th June, 2008 and thereafter no further date of hearing was fixed. In the circumstances, prayer made in this petition is to direct the Respondents to release the seized goods.

4. In the counter affidavit filed by the Respondents, after the seizure of the goods in a manner pointed out above and taking the delivery thereof on 17th June, 2008, details of various hearings which took place from time to time are given. It is mentioned that on 19th June, 2008 Sh. Govind along with the lawyer attended and stated that the assets seized by the Department pertained to different parties. They sought adjournment to explain all these assets. Matter was adjourned to 24th June, 2009 on which date nobody appeared. However, on the next date i.e. 30th June, 2008 Sh. Govind appeared with his lawyer and produced certain bills and GRs. These details were found to be incomplete and the matter was adjourned to 7th July, 2008. On 7th July, 2008 statement of Sh. Govind was recorded under Section 131 of the Act.

5. Learned counsel for the Respondents has produced the original record before us which contains the statement of Sh. Gobind. Perusal of the statement indicates that he mentioned about

some documents which were called for and promised to produce the same within two-three days. The matter was adjourned to 24th July, 2008. However, on 24th July, 2008 nobody attended. In these circumstances, even a letter dated 11th August, 2008 was issued by the Respondents to the three persons to whom the goods purportedly belong. Meanwhile, information was sent to the CITs within whose jurisdiction the said parties fall. On 14th October, 2008 summons under Section 131 of the Act were again issued to the Petitioner for appearing on 20th October, 2008 as he has not appeared on previous dates. AR of the petitioner furnished details and matter was adjourned to 24th October, 2008 for furnishing further details on that date. However, request was made and the case was again adjourned to 30th October, 2008. However, on 30th October, 2008 nobody appeared. It was under these circumstances that an appraisal report was prepared on 30th October, 2008 and was sent to the CIT-II and CIT (Central) –I Ahmadabad for further action where the Petitioner-firm is being assessed.

5. Thus as per the Department the entire record has been sent to the jurisdictional CITs for further action as per the income tax law.

6. Section 132B provides the mechanism for application for requisitioning assets. It is not in dispute that Petitioners are assessed by the Assessing Officer at Ahmadabad under the charge of CIT, Ahmadabad-I. Therefore, going by the aforesaid considerations it would be appropriate for the Petitioners to move an application before the jurisdictional authority for the release of the goods. They may move such an application within two weeks

and once such an application is moved the concerned Assessing Officer shall deal with the same and pass appropriate orders thereupon within four weeks thereafter, subject to the Petitioners fully co-operating with the Assessing Officer in this behalf.

7. The writ petition is disposed of with above directions.

A.K. SIKRI, J.

SIDDHARTH MRIDUL, J.

NOVEMBER 06, 2009

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