* IN THE HIGH COURT OF DELHI AT NEW DELHI

% CRL. REV. P. NO.661/2007

\+ **Date of Decision: 09th April, 2013**

\# **QUASIM ALI** **....Petitioner**

! Through: None

Versus

$ **ADDITIONAL COMMISSIONER OF CUSTOMS** **…Respondent**

Through: Mr.Biswajit Bhatacharaya, ASG,
Mr. Sumant De, Advocate for contemnor
Mr. Satish Aggarwala, Advocate for respt.

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

ORDER

P.K.BHASIN, J:

By way of this revision petition filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, the petitioner-convict had sought setting aside of the judgment dated 29th October, 2007 passed by the learned Additional Sessions Judge whereby the appeal filed by him against the judgment dated 27th February, 2002 passed by the learned Additional Chief Metropolitan Magistrate holding him guilty for the commission of offences punishable under Sections 132 and 135(1)(a) of the Customs Act and the order dated 2nd March,2002 sentencing him to undergo three years rigorous imprisonment and fine of Rs.1000/- under Section 135(a) and six months imprisonment and fine of Rs.1000/- under Section 132 was rejected.

2. The petitioner-convict was tried on the allegations that 23rd January,1995 he had landed at the IGI Airport, New Delhi in a flight from Dubai he was found to be carrying smuggled gold in his rectum in the form of two biscuits of ten tolas each. After trial these allegations were found to be true by the trial Court and so he was convicted. The appellate Court rejected his appeal.

3. During the hearing of this petition a grievance was raised on behalf of the petitioner-convict that when his appeal against his conviction was pending in Sessions Court he had sought compounding of the offences of which he had been convicted, since by that time those offences, which were earlier not compoundable, had been made compoundable by Amendment Act of 2004, by approaching the competent authority in the Customs Department on 30th March,2007 under Section 137(3) of the Customs Act but no decision was being taken and he had been getting the hearing of his appeal adjourned from time to time to await the result of his request for compounding. The failure of the department to dispose of the petitioner's request for compounding led to the filing of a writ petition(being W.P.(Crl.) No. 641/2007 in this Court at the instance of the petitioner-convict. In that petition a direction was initially given to the customs department on the disposal of the petitioner's application for compounding before 25th July,2007 but that was not done and then vide order dated 21st September,2007 the writ petition was finally disposed of with a direction to the Customs Department to dispose of the petitioner's

application within two weeks. But no decision was taken on the petitioner's application for compounding within two weeks.

4. As per the petitioner's case, the appellate court had been adjourning the hearing in the appeal to await the decision of the Department on the compounding application but when no decision was being taken the appellate court finally decided the hear the appeal without waiting for the decision of the Department and proceeded ahead to hear the arguments and then dismissed the petitioner's appeal vide judgment dated 29th September,2007. Then the present revision petition came to be filed. However, the petitioner-convict did not move any contempt petition for non-compliance of this Court's directions.

5. During the pendency of this petition, however, the petitioner's compounding application was rejected by the competent authority vide order dated 11th February,2008. Copy of that order has been placed on record on behalf of the Department.

6. Rejection of his compounding application does not appear to have been challenged by the petitioner-convict.

7. However, when this Court took up the revision petition for hearing the counsel for the petitioner then brought to the notice of the Court the fact that the competent authority had not passed any order on his compounding application within the time granted by this Court in his writ petition. Then this Court called upon the Chief Commissioner of Customs(Preventive) to show cause why action for contempt of court be not taken against him.

8. Thereafter, the Chief Commissioner of Customs(Preventive) who during the relevant period was the competent authority to deal with the petitioner's compounding application but had retired by the time he was required to explain his default, filed his affidavit dated 29th January, 2010. The relevant paras of that affidavit are reproduced below:

> *"4. The application for compounding of offences filed by the petitioner could not be decided within the period provided by this Hon'ble Court for the following reasons:*
>
> *(i) The directions for consideration and passing appropriate orders on the request of compounding of offence were passed by this Hon'ble Court on 30.05.2007 in W.P.(C) No.641/2007.*
>
> *(ii) Vide communication dated 15.06.2007, Annexure-A hereto, the Joint Commissioner requested the petitioner to intimate whether he had filed an affidavit before the court undertaking to comply with the provisions of the Compounding Rules. Copy of the said letter was forwarded to the ld. Counsel for the petitioner.*
>
> *(iii) As nothing was heard, the Joint Commissioner reminded the Ld. Counsel for the petitioner vide letter dated 03.07.2007, Annexure-B hereto to a submit copy of the affidavit and undertaking. It was also mentioned in the said letter that the letter addressed to the petitioner had been returned undelivered with the comments that the premises was found locked and repeated visits.*
>
> *(iv) Vide letter dated 04.07.2007, Annexure-C hereto, the Ld. Counsel for the petitioner intimated that he had filed the affidavit in the court of ACMM, New Delhi.*
>
> *(v) Vide letter dated 25.07.2007, Annexure-D, the department informed the Ld. Counsel for the petitioner that the affidavit was neither signed nor any acknowledgment had been provided. The counsel for the petitioner was further informed that personal hearing had been fixed for 07.08.2007 in the*

office of the undersigned. This letter was also sent by speed post. A copy of the postal receipt dated 27.07.2007 is Annexure-E.

(vi) *Vide letter dated 07.08.2007, Annexure-F, the Ld. Counsel for the petitioner confirmed that he had appeared before undersigned on 07.08.2007 but he had not brought the copy of the affidavit. He sought time to file the same. He also sought time to file authorization. Since nothing was done by the petitioner and/or his counsel, the department vide letter dated 28.09.2007, Annexure-G, again requested the counsel for the petitioner to produce the copy of the affidavit, duly signed by the deponent and also to produce authorization in favour of the counsel for the petitioner.*

(vii) *Vide order dated 21.09.2007, Annexure-H, this Hon'ble Court directed the Chief Commissioner to take a decision on the application of the petitioner within two weeks. The order of the Hon'ble High Court dated 21.09.2007 was received in the office of the Commissionerate on 09.10.2007 with the covering letter to the counsel dated 04.10.2007, a copy of which is Annexure-I.*

(viii) *Vide letter dated 17.10.2007, Annexure-J, the department reminded the Ld. Counsel for the petitioner to submit the copy of the affidavit and authorization at the earliest so that action in the matter could be taken. Since nothing was done by the petitioner and/or his counsel vide letter dated 11.12.2007, Annexure-K, the department reminded the Ld. Counsel for the petitioner to produce the copy of the affidavit and authorization. The next date for personal hearing was fixed for 09.01.2008.*

(ix) *Vide letter dated 09.01.2008, Annexure-L, the Ld. Counsel for the petitioner informed the office of the undersigned that the certified copy of the affidavit had already been furnished on 23.08.2007.*

(x) *Personal hearing was held in the office of the undersigned on 09.01.2008.*

(xi) *The compounding order was passed on 06.02.2008 by the undersigned, a copy of which is Annexure-M. The said order* *was dispatched to the petitioner as well as the Ld. Counsel for the petitioner by speed post on 12.02.2008. Copies of the two postal receipts are Annexure-N and O."*

9. The petitioner-convict did not file any affidavit controverting the stand taken by the contemnor that his application could not be disposed of within the given since he was not submitting the required affidavit admitting that he was guilty and was willing to accept whatever penalty would be imposed on him while compounding the offences in question. It was contended by the learned Additional Solicitor General appearing for the retired Chief Commissioner of Customs(Preventive) that the Department was only interested in giving full opportunity to the petitioner-convict to comply with the Compounding Rules one of which was he should have filed an affidavit in the Court to the aforesaid effect and its copy was to be furnished with the competent authority but he did not do that though he had been seeking time in which process the time for the disposal of the application had expired. The Chief Commissioner of Customs in good faith only and to do full justice to the petitioner-convict did not reject his application in haste. Of course, the learned Additional Solicitor General also submitted, the Department could and should have sought extension of time from this Court but having not done that it should not be inferred that the contemnor had willfully committed disobedience of the directions of this Court in the writ petition.

10. In the aforesaid circumstances, I find myself in full agreement with the submissions of Mr. Abhijit Bhattacharaya, learned Additional Solicitor

General that by giving opportunities to the convict to comply with the requirements of Compounding Rules the Chief Commissioner could not be said to have consumed more time than granted by this Court for the disposal of compounding application with the intention of flouting the directions of this Court. The non-disposal of the compounding application was not deliberate.

11. Therefore, the contempt proceedings against the contemnor Mr. Abhijit Bhattacharya, retired Chief Commissioner of Customs (Preventive) are dropped.

P.K. BHASIN,J

April 09, 2013