04.10.2021
Ct No. 35
D/L 131
ab

C.R.R. 912 of 2021
(Via Video Conference)

Re: An application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973.

In re : **Rajesh Jain @ Rajendra Sethiya,**
... Petitioner

Mr. Sagar Bandopadhyay,
Mr. Kushagra Shah,
Mr. Pinak Kumar Mitra,
... for the petitioner

Mr. Kaushik De,
... for the Customs Authority

Joint Commissioner of Customs (Preventive) passed an order dated June 18, 2014 of confiscation of 15 pieces of gold bars and Indian currency of Rs. 10,200/- against the petitioner. Penalty was also imposed upon the petitioner by the said order.

The Commissioner of Customs (Appeal) by an order dated June 13, 2017, set aside the said order of confiscation and penalty on the petitioner and directed that the appellant was entitled to return of the gold and the currency.

The said order of the Commissioner of Customs (Appeal) dated June 13, 2017, was challenged before the Customs Excise and Service Taxes Appellate Tribunal. The said Tribunal dismissed the appeal on November 7, 2017. Again against the order of the Tribunal, an appeal was preferred before the High Court. The said appeal was also dismissed on June 24, 2019.

The petitioner, however, made a prayer for return of the gold and the currency before the learned Magistrate, before whom a prosecution case, under Section 135 of the Customs Act, 1962, was filed against the petitioner. The learned Magistrate held that there was a subsisting order of the competent authority with regard to the return of the gold and the currency and, therefore, it was not necessary to pass any further order. The learned Magistrate, however, rejected the prayer observing as follows:

> "*Moreover, the seized Gold and the currency are the subject matter and required till the disposal of the case.*"

Mr. Sagar Bandopadhyay, learned advocate appearing for the petitioner submits that since the seizure was made in connection with the confiscation proceeding and the confiscation proceeding has been set aside by the Commissioner of Customs (Appeal), there was no justification on the part of the learned Magistrate in the Court below to hold that the seized gold and the currency were required for the disposal of the proceeding under Section 135 of the Customs Act, 1962.

Mr. Kaushik De, learned advocate appearing for the Customs authority submits that the petitioner's appeal before the Customs Excise and Service Taxes Appellate Tribunal as well as before the High Court was dismissed on the ground of monetary limit and there was no decision on the merit.

I am of the opinion that when the Commissioner of Customs (Appeal) has set aside the order of confiscation and directed the return of the gold and the currency, there was no occasion on the part of the customs authority to withhold the seized gold and the currency in question.

In that view of the matter, this revisional application is allowed by directing the Commissioner of Customs (Preventive), Custom House, 15/1, Strand Road, Kolkata- 700 001, to return the seized gold and currency notes to the petitioner in connection with the case being F. No. SI(VIII)-08/95 P, within a period of four weeks from date.

Needless to mention that the learned Magistrate in the Court below will proceed with the prosecution case notwithstanding the order passed by this Court in this application.

The Customs authorities shall videograph the seized gold pieces and currency notes in presence of the petitioner. The videograph may be produced by the Customs authorities before the learned Magistrate in the Court below, if the same is called for.

The revisional application being **C.R.R. 912 of 2021** is, thus, disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(**Kausik Chanda**, **J.**)