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WPA 17837 of 2017

Bhagwati Prasad Soni @ Bhagwati Prasad Tosawar
Vs

The Assistant Commissioner, Central Excise & Ors.

Mr. Arijit Chakrabarti,
Mr. Nilotpal Chowdhury,
Mr. Prabir Bera,
Mr. Deepak Sharma

... For the Petitioner.

Mr. Kaushik Dey,
Mr. Abhradip Maity

... For the Respondents.

Heard learned Advocates appearing for the parties.

Petitioner has filed this writ petition being aggrieved by the inaction on the part of the respondent/Central Excise authority concerned in releasing the seized gold in question having quantity of 516.300 grams which was seized from the Premises No.P-11, Debendra Dutta Lane, Kolkata-700 007 in course of search and seizure conducted on 12th January, 1979 belonged to one Sri Dura Ram Soni. It appears from the Panchnama by the respondent authority concerned as appears at page 28 of the writ petition where it has been specifically recorded as hereunder :

“Recovered from the steel almirah and Iron safe place in bedroom of Shri Bhagwati Prasad Soni s/o Shri Dura Ram Soni. The almirah and safe were opened by Shri Bhawgati Prasad Soni with his own keys.”

It appears from record that thereafter adjudication proceedings was initiated and finally culminated into the final adjudication order on 3rd January, 1981 which was passed by the Collector, Central Excise being Annexure P-2 to the writ petition.

On perusal of the aforesaid adjudication order dated 3rd January, 1981, it appears that a show-cause-notice was issued to the petitioner Sri Bhagwati Prosad Soni on 24th April, 1979 on the alleged contravention of the provisions of Section 27(1)(41)(b), 42(ii) and 55 of the Gold (Control) Act, 1968. In paragraph 6 of the aforesaid adjudication order it appears that the Adjudicating Authority has recorded that petitioner in his reply to the show-cause-notice dated 28th May, 1979 in response to the aforesaid show-cause-notice had denied that he is the owner of such Premises in question and he admitted that the gold in question was seized from the Almirah of his father's bedroom but key was provided by the petitioner and had admitted that since the petitioner's father had left for Rajasthan, in his absence he was sleeping in his father's bedroom and taking care of the belongings of his father including that Almirah from which gold in question was seized. In spite of recording all these statements made by the petitioner in his aforesaid reply, in paragraph 12 of the

adjudication order, the Adjudicating Authority has specifically recorded that after going through the records of the case proceedings he came to the conclusion that it was evident that the gold in question was seized from the custody of the petitioner Bhagwati Prosad Soni and the Adjudicating Authority has also specifically recorded that whether Sri Bhagwati Prosad Soni was residing with his father or not is immaterial since at the material point of time petitioner was in possession of the Almirah with gold in question and the contention of the petitioner that he was staying separately from his father in another premises was not accepted by the Adjudicating Authority. The aforesaid findings and conclusion of the Adjudicating Authority was not reversed or disturbed by the Appellate Tribunal and at no point of time such finding and conclusion by the adjudicating authority was challenged by the respondents.

After recording in detailed and making elaborate discussion, the Adjudicating Authority passed the order, the relevant concluding portion of the order is as hereunder :

“For the reasons stated above, I hold that the various charges as mentioned in the show cause notice are conclusively proved. I, therefore, order confiscation of the gold weighing 516.300 gms. However, I order release of the same on payment of a fine of Rs.42,000/(Rupees Forty Two thousand only) provided Shri Bhagwati Prosad Soni exercises his option to get the gold released on payment of the fine

as stated above and convert the same into ornaments within one month from the date of release of the gold.”

The aforesaid adjudication order was further challenged by the petitioner before the Appellate Tribunal which was finally disposed of by the order dated 18th September, 1986, by only reducing the penalty amount but no aforesaid findings recorded in paragraph 12 of the adjudication order was disturbed or interfered with. Particularly paragraphs 9 and 10 of the aforesaid order of the Tribunal which is relevant are quoted herein below:

“ 9. At the fag end of the arguments learned counsel for the appellants also submitted that the amount of penalty imposed is on excessive side. After giving our due consideration to the submissions so made, we feel that in the peculiar facts and circumstances of the case the imposition of personal penalty of Rs.50,000/- would met the ends of justice.

10.In the result, the impugned order is confirmed. But the penalty imposed on the appellant, Shri Bhagwati Prasad Soni is reduced to Rs.50,000/- (Rupees fifty thousand only) as stated above. With this modification the appeals are otherwise dismissed being devoid of any merits.”

Against the aforesaid order of the Tribunal reference application was filed by the petitioner which was dismissed by the order dated 6th March, 1987 and which was further challenged by way of writ petition being CO No.8790(W) of 1988 which was dismissed for default by the order dated 9th September, 2003.

So, the admitted factual and legal position remains that the final adjudication order of release of the seized

gold in question in favour of the petitioner is still in force subject to the payment of penalty and fine as per modified order of the Tribunal. It appears from record annexed to the writ petition that petitioner ran from pillar to post for release of the seized gold in question but the same has not been released to the petitioner by the respondent authority concerned in spite of specific order of the Adjudicating Authority itself granting order for release of the seized gold in question in favour of the petitioner by specifically holding in paragraph 12 of the adjudication order that at the material point of time, the seized gold in question was found in possession of the petitioner Sri Bhagwati Prasad Soni at the Premises in question and that the petitioner could not produce any documents otherwise before the Adjudicating Authority and it accepted the statement of the petitioner that petitioner was the owner at the time of seizure on 12th January, 1979. It is also worth recording that the aforesaid adjudication order releasing the seized gold in question in favour of the petitioner during the time when the petitioner's father was alive from whose premises gold in question was seized.

Mr. Dey, learned Advocate appearing for the respondents in opposing the writ petition has specifically submitted that respondent authority

concerned is ready and willing to release the seized gold in question in favour of the petitioner subject to fulfillment of three conditions intimated to the petitioner by the department by the letter dated 6th/7th September, 2018 issued by the Deputy Commissioner (Anti Evasion), Kolkata North GST and CX which are quoted as follows :

- “(i) GAR-7 Challans/E-Receipts evidencing payment of fine/penalty as ordered by the Hon’ble CEGAT vide Order No.A-469-470/86-NBR dated 18.09.1986.
- (ii) Documents proving your identity as a claimant of the seized goods;
- (iii) No objection certificate from all the successors of Late Dura Ram Soni.”

Let such letter be kept with the record.

When Mr. Dey was asked as to why the aforesaid new three conditions have been imposed for release of gold in question and particularly condition No. (iii) about furnishing “No Objection Certificate” from all the successors of Late Dura Ram Soni deceased father of the petitioner while nowhere such conditions were imposed either in the adjudication order or in the order of the Appellate Authority to which Mr. Dey submits that since it has been recorded in the adjudication order that the petitioner after search and seizure had retracted from the statement that the seized gold in question belonged to him. But when he was asked as to why such retraction was not accepted by the Adjudicating Authority and in spite of such

retraction, the Adjudicating Authority has passed order of releasing of the seized gold in question in favour of the petitioner and not in favour of his father, he had no answer to this question. He repeatedly submitted that since at one point of time petitioner had retracted from his statement that the seized gold in question belonged to his father who has expired that is why the authority insists for submission of "No Objection Certificate" from all the successors of Late Dura Ram Soni, the father of the petitioner. When Mr. Dey was asked if it is the case of the respondents that the seized gold in question does not belong to the petitioner and it belongs to his father then why proceedings was initiated against the petitioner, show-cause-notice was issued against the petitioner and why in the final adjudication order for release of seized gold in question was passed in favour of the petitioner and not in favour of the petitioner's father and petitioner was asked to make payment of penalty and fine and this order of the Adjudicating Authority for release of the seized gold in question in favour of the petitioner Bhagwati Prasad Soni has not been reversed or interfered with till date by any authority in any proceeding, he had no answer to this question.

So far as conditions Nos. (i) and (ii) in the intimation dated 6th/7th September, 2018 for release of

gold in question are concerned, Mr. Chakraborty, learned Advocate appearing for the petitioner submits that petitioner is ready and willing to comply with the same.

Considering the facts and circumstances of the case as appears from record and submission of the parties I am of the considered view that the action of the respondent authority concerned in not releasing the seized gold in question in favour of the petitioner is arbitrary and illegal in view of the facts and circumstances of the case which appears from record and adjudication order and I am of the considered view that the conditions of imposing of production of "No objection certificate" by the petitioner from all the successors of Late Dura Ram Soni by the intimation dated 6th/7th September, 2018 is irrational and unreasonable and not sustainable in law since during the life time of Sri Dura Ram Soni, the Adjudicating Authority had passed the order for release of the seized gold in question in favour of the petitioner and that order has not been interfered by any higher forum in any proceeding.

Accordingly, this writ petition being WPA 17837 of 2017 is disposed of by allowing the same on the following terms and conditions:

- i) Within two weeks from date petitioner shall deposit the fine amount of Rs.42,000/- and penalty of Rs.50,000/- as per modified order of the Appellate Authority in favour of the respondent authority concerned along with the documents relating to identity of the petitioner and the documents asked for in condition no. (i) of the intimation dated 6th/7th September, 2018.
- ii) Petitioner shall also submit an Indemnity Bond in proper Form indemnifying the authority from any claim over the said seized gold in question to be released, if made by any person, in future, equal to the value of the seized gold in question.
- iii) The respondent authority concerned, shall release the seized gold in question within four weeks from the date of compliance of the aforesaid conditions herein above.

(Md. Nizamuddin, J.)