IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 5418 OF 2022

Shri Jigesh Praveen Shah. … Petitioner.
V/s.
Union of India and others. … Respondents.

Ms.Priyanka Lokhande with Ankita Parab and Divya Rai i/b. Enact Legal for the Petitioner.

Mr.Karan Adik with Mr.Maya Majumdar for the Respondents.

CORAM : NITIN JAMDAR AND ABHAY AHUJA, JJ.

DATE : 27 April 2023.

P.C. :

The Petitioner arrived in Mumbai from Dubai by a flight on 19 July 2015. He had cleared himself and his baggage through the green channel. The Petitioner was asked whether he was carrying any gold or contraband in his baggage to which the Petitioner replied in negative. The Petitioner went through a metal detector and it indicated that the Petitioner was carrying some metal item. Upon this, Panchas were called and it was found that the Petitioner was concealing two gold chains and two gold bars in his shoes. The gold chains and gold bars were confiscated.

2. Statement of the Petitioner was recorded on 20 July 2015. On 27 July 2015, the Petitioner retracted his statement. Thereafter, the Petitioner again gave a statement on 18 December 2015 whereby he reverted to his original statement dated 20 July 2015.

3. Proceedings were undertaken against the Petitioner for violation of the provisions of the Customs Act. The Additional Commissioner of Customs upon hearing the Petitioner passed an order dated 25 August 2016 and confiscated two gold chains and two gold bars valued at Rs.72,18,429/- under section 1211(d), (l) and (m) of the Customs Act. The Commissioner also imposed penalty of Rs.7,50,000/- on the Petitioner under section 112(a) and (b) of the Customs Act.

4. Being aggrieved, the Petitioner filed an appeal before the Commissioner of Customs (Appeals). The Commissioner (Appeals) by order dated 28 February 2019 allowed redemption of the goods on payment of fine of Rs.13,00,000/- while upholding the penalty of Rs.7,50,000/-.

5. Thereupon the Department filed Revision to the Government under section 129DD of the Customs Act. The Revisional Authority after giving an opportunity to the Petitioner reversed the order of the Commissioner (Appeals) and restored the

order of absolute confiscation of goods as per the order of the Original Authority and maintained the penalty of Rs.7,50,000/- Being aggrieved, the Petitioner is before us in this petition.

6. The learned counsel for the Petitioner submitted that the Petitioner is ready to pay penalty of Rs.7,50,000/-, however, the absolute confiscation of the goods in question be set aside. Learned counsel submitted that there is no error in the order passed by the Commissioner (Appeals) in permitting redemption of the goods on payment of amount stipulated in the order-in-appeal. Learned counsel submitted that the Revisional Authority has not properly appreciated that the Petitioner has no antecedents and he was carrying the gold for his sister who has filed affidavit to that effect. Learned counsel submitted that the view taken by the Revisional Authority is perverse and needs to be set aside and the order-in-appeal needs to be restored. The learned counsel for the Respondents submitted that the order-in-original has given cogent reasons why absolute confiscation is necessary and even the Revisional Authority while dealing with the issue has given reasons why absolute confiscation is necessary. Learned counsel submitted that the order-in-appeal while granting redemption of the goods has not given cogent reasons as required under law.

7. The confiscation of goods is dealt with in Chapter-XIV of the Customs Act. Section 125 deals with an option to pay fine in

lieu of confiscation. Under section 125 whenever confiscation of any goods is authorized under the Act, the Adjudicating Authority may give to the owner of the goods an option to pay in lieu of confiscation such fine as the Adjudicating Authority thinks fit. There is, therefore, a discretion vested in the Adjudicating Authority whether to adopt this course of action or not.

8. The Additional Commissioner acting on first instance had exercised the discretion not to give the option to the Petitioner and reasons in support of use of this discretion recorded found in the order-in-original. The Additional Commissioner referred to inconsistent submissions and the fact that there is serious doubt about the ownership of the goods and held that the manner in which the incident has occurred gives rise to strong impression that the Petitioner was carrying goods for monetary consideration. On this grounds, the Additional Commissioner refused to give option of redemption of goods to the Petitioner. The Commissioner (Appeals) referred to the decision of the Madras High Court in the case of *Samynathan Murugeshan v. Commissioner*[1] and after recording that each case needs to be decided on facts of each case and disposal of cases cannot be blindly by placing reliance on a decision, did exactly the opposite and entirely followed the decision of the Madras High Court. The Commissioner (Appeals) only referred to the statement whereby the Petitioner retracted his earlier statement, however, did not refer to the subsequent statement whereby the

1 2009 (247) ELT 21 (Mad.)

earlier statement was restored. On the other hand, the Revisional Authority has observed that the absolute confiscation of the gold would act as a deterrent to such offenders who indulge in such acts and has relied upon the decision of the Delhi High Court in the case of *Jain Exports v. Union of India*[2].

9. The Revisional Authority has done an analysis of facts and found that the quantity is large, it was consciously concealed which revealed the intention of the Petitioner and considering the overall circumstances, the Revisional Authority restored the order-in-original of absolute confiscation of goods and penalty. We have to be mindful of the parameters of the writ jurisdiction. The petition arises from use of discretion. The Revisional Authority has considered all the facts necessary for exercise of discretion. All relevant facts have been taken into consideration. Judicial precedents are analysed and tests therein are applied. The view taken by the Revisional Authority and the Original Authority is a possible view and cannot be considered as perverse. No interference is warranted in writ jurisdiction.

10. Writ petition is accordingly dismissed.

(ABHAY AHUJA, J.) (NITIN JAMDAR, J.)

---

2 1987 (29) ELT 753