

(2014) 02 CAL CK 0132**Calcutta High Court****Case No:** W.P. No. 43 of 2014

Ashupati Nath Dhandania

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Feb. 25, 2014**Citation:** (2014) 305 ELT 392**Hon'ble Judges:** Harish Tandon, J**Bench:** Single Bench**Advocate:** A. Chakraborty, Advocate for the Appellant; S.B. Saraf and R. Bhardwaj, Advocate for the Respondent**Judgement**

@JUDGMENTTAG-ORDER

Harish Tandon, J.

The petitioner has assailed the inaction on the part of the authorities in not releasing the goods confiscated by the authorities from the custody of the petitioner. It appears that the petitioner was apprehended at Malda railway station while carrying eight numbers of gold biscuits weighing 933.12 gms. and a seizure list was also handed over to the petitioner. A proceeding was initiated after issuance of the show cause notice and the assessing authority found the petitioner guilty of offence.

2. The petitioner carried the said order before the appellate authority who affirmed the order of the assessing authority. The said order of the appellate authority was assailed by the petitioner before the Customs, Excise and Service Tax Appellate Tribunal. The Tribunal set aside the order of the appellate authority and remanded the matter to the appellate authority for reconsideration. The appellate authority ultimately allowed the said appeal of the petitioner, as a consequence whereof the order of the assessing authority was set aside.

3. The petitioner then approached the concerned authority for return of the seized goods after having emerged successful in the appeal. The petitioner says that while

the appeal was pending, the authority concerned had sold the seized goods and precisely for such reasons the said authority is showing reluctance in addressing the prayer made by the petitioner for return of the seized goods.

4. Mr. Saraf, learned Advocate appearing for the department, could not dispute the fact that the order of the assessing authority was quashed and set aside by the appellate authority, meaning thereby that the proceeding initiated against the petitioner stood dismissed.

5. Such being the undisputed position, this Court therefore does not justify the action of the concerned respondent authority in withholding the seized goods.

6. Reference is made by the learned counsel for the petitioner to a decision of a Division Bench of this Hon'ble Court given in the case of Union of India (UOI) and Others Vs. Shambhunath Karmakar and Others, where it was held that if the authorities had already sold the seized goods, it was the obligation of the Government or the authority concerned either to return to the owner of the goods a quantity equivalent to the seized goods or pay the market price of such seized goods in the event the proceeding initiated by the authority is decided in favour of the owner of the seized goods.

7. According to the learned counsel for the petitioner, the similar view is expressed by the Hon'ble Apex Court in case of the State of Bombay (Now Gujarat) Vs. Memon Mahomed Haji Hasam, wherein it was held that once the property was liable to be returned, there was not only a statutory obligation to return the seized goods to the owner but until the order of confiscation became final there was also an implied obligation to preserve the said property, being the seized goods, intact in these words: "There being thus a legal obligation to preserve the property intact and also the obligation to take reasonable care of it so as to enable the Government to return it in the same condition in which it was seized, the position of the State Government until the order became final would be that of a bailee. If that is the correct position once the Revenue Tribunal set aside the order of the Customs officer and the Government became liable to return the goods, the owner had the right either to demand the property seized or its value if in the meantime the State Government had precluded itself from returning the property either by its own act or that of its agents or servants."

8. This Court therefore finds that the action of the authority concerned, being the respondent No. 2 herein, in withholding the seized goods and not returning the same to the petitioner after the order of the assessing authority was set aside by the appellate authority, is not proper and cannot be justified.

9. The concerned respondent authority, being the respondent No. 2 herein, is directed to hand over the exact quantity of the gold as shown in the seizure list dated October 24, 2000 or the equivalent money for the aforesaid quantity of the said goods at the present market rate to the petitioner within three weeks from the

date of communication of this order.

10. The concerned authority, being the respondent No. 2 herein, shall also reimburse the petitioner the amount deposited by him in terms of the order passed by the Commissioner of Central Excise (Appeals) within three weeks from the date of communication of this order together with interest @ 4% per annum beginning from June 7, 2012 until payment. With the aforesaid directions, the writ petition stands disposed of. There will be no order as to costs.