

IN THE HIGH COURT OF ALLAHABAD
Application U/s 482 No. - 15456 Of 2019

RAM GOPAL SONI

Vs

UNION OF INDIA

THROUGH ITS MINISTRY OF CUSTOM AND EXCISE AND ANOTHER

Arvind Kumar Mishra-I, J

Dated: May 03, 2019

Appellant Rep by: Amit Kumar Pandey, Dr C P Upadhyay

Respondent Rep by: B K Singh Raghuvanshi

Cus - It is alleged that gold bars weighting approximately 7k.g. worth Rs. 2 crores and odd were seized from one person Rajat Soni - He, as per statement recorded under section 108 Custom Act, specifically stated that he being a carrier works for applicant who runs M/s Bhagwati Jewellers - The applicant claims the ownership of the recovered gold bars and has moved release application - The Union of India/ Custom Department has claimed that at the time of recovery and preparation of 'Panchnama' of commodity in question, no doubt, recovered by lawful authority and possession was shown, which was mandatory under section 137 of Custom and Excise Act - In absence of any valid paper at the time of seizure of the gold bars, it becomes smuggled commodity and proved as such under the law - Since the issues involved are contentious and legal it has been brought to the notice of the court and after recording the statement under section 108 of Custom Act, notices were sent to the applicant thrice, which the applicant fails to respond to and he failed to raise any plea before the authority concerned - The applicant is given reasonable opportunity to appear before the authority/ court concerned to set up his defence to the best of his ability, for which six weeks time is given to the applicant to move proper application in response to the notice and to put in his physical presence before the authority concerned - For six weeks, no coercive action shall be taken against the applicant: HC

Application disposed of

JUDGEMENT

Per: Arvind Kumar Mishra:

Heard Sri Dr. C.P. Upadhyay, learned counsel for the applicant Sri B.K.Singh Raghuvanshi, learned counsel for Union of India and learned A.G.A. for the State.

By way of the instant application, the applicant has prayed for quashing the entire proceedings of complaint case no. 49 of 2019 under section 135 of

Custom Act, 1962 pending before the Special Chief Judicial Magistrate, Varanasi.

O.P. No. 2 has been inadvertently impleaded as a party, which requires to be deleted during the course of the day by the learned counsel for the applicant. He is permitted to do so.

The subject matter of dispute is debatable between the parties. The allegations made has the background of potency by virtue of the provisions of the Custom Act,1962.

It is alleged that gold bars as many as seven in number weighting approximately 7k.g. worth Rs. 2 crores and odd were seized from one person Rajat Soni. He, as per statement recorded under section 108 Custom Act, specifically stated that he being a carrier works for a person (applicant) who runs M/s Bhagwati Jewellers G-12 Vimal Chamber, Opposite Kamla Nehru School, Haldiyan Ka Rasta, Johari Bazar, Jaipur. The applicant claims that no offence has been committed by him and he is the owner of the recovered gold bars. All the relevant papers regarding the innocence of the applicant have been placed on record. If the authorities concerned perused the same, they would have themselves passed the order in favour of the applicant. There is no dispute regarding the recovery of the gold bars that it was a smuggled commodity. It has been wrongly branded as such by the custom authorities because they could not show that it was a purchase transaction and nothing else. The applicant claims the ownership of the recovered gold bars and has moved release application.

Sri B.K.Singh Raghuvanshi, learned counsel appearing for the Union of India/ Custom Department has claimed that at the time of recovery and preparation of the 'Panchnama' of the commodity in question, no doubt, recovered by lawful authority and possession was shown, which was mandatory under section 137 of the Custom and Excise Act. In absence of any valid paper at the time of seizure of the gold bars it becomes smuggled commodity and proved as such under the law. Since the issues involved are contentious and legal it has been brought to the notice of the court and after recording the statement under section 108 of the Custom Act, notices were sent to the applicant thrice, which the applicant fails to respond to and he failed to raise any plea before the authority concerned.

In view of the above, now the applicant is given reasonable opportunity to appear before the authority/ court concerned to set up his defence to the best of his ability, for which six weeks time is given to the applicant to move proper application in response to the notice and to put in his physical presence before the authority concerned.

However, taking into consideration the facts and circumstances of the case, it is provided that in case applicant moves an application within the time prescribed before the authority/court concerned, he or it as the case may be shall, after affording opportunity of hearing to both the parties, pass appropriate order without incurring any further delay.

For six weeks from today, no coercive action shall be taken against the applicant.

It is made clear that in the event no such application is moved within the time prescribed above, this order will be of no avail to the applicant and it shall be deemed that he has misused this order of the court.

With the above direction, the instant application under Section 482 Cr.P.C. is finally disposed of