

Chandra Pal Singh Vs. the Additional Collector, Central Excise

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Court : Allahabad

Decided On : Nov-03-1987

Reported in : 1988(17)ECC303

Judge : R.M. Sahai and; Om Prakash, JJ.

Appeal No. : Civil Misc. Writ Petition No. 632 of 1984

Appellant : Chandra Pal Singh

Respondent : The Additional Collector, Central Excise

Judgement :

R.M. Sahai, J.

1. The only question for consideration in this petition is if the opposite parties could have refused to release the primary gold seized under Gold (Control) Act even though petitioner had complied with the conditions imposed in adjudication proceedings.

2. In adjudication proceedings, it was held that the charge of contravention of provisions of Section 27 of the Act could not be established. But the petitioner was found to have acted in breach of Sections 8(1), 11 and 17. The Additional Collector, therefore, while imposing penalty Rs. 31,000 directed the gold to be confiscated but gave an option to petitioner to redeem it on payment of Rs. 80,000

within three months. It is not disputed that the petitioner deposited both penalty and the amount determined for redemption within three months. But it was not released as Collector, Central Excise after the adjudication order passed an order that since petitioner was to be prosecuted under Section 85 of the Act where the gold shall have to be exhibited it was not possible to release it.

3. Order to launch criminal prosecution passed by Collector cannot be equated with initiation of prosecution. No effort has been made by opposite party to produce any order or even material to establish, if criminal proceedings were initiated in pursuance of the order passed by the Collector. In these circumstances, there is no option but to direct the opposite party to act in accordance with order passed in adjudication proceedings.

4. In the circumstances, a direction is issued to the Collector, Central Excise, Kanpur to release the primary gold of the petitioner weighing 1010.900 grams forthwith. There shall be no order as to costs.