

**Vasudevan Vs. Assistant Collr. of C. Excise and Customs**

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**Court :** Kerala

**Decided On :** Sep-14-1993

**Reported in :** 1994(72)ELT533(Ker)

**Judge :** M.M. Pareed Pillai, J.

**Acts :** Gold (Control) Act, 1968 - Sections 71(1); [Customs Act, 1962](#) - Sections 153

**Appeal No. :** Original Petition No. 10475 of 1989-V

**Appellant :** Vasudevan

**Respondent :** Assistant Collr. of C. Excise and Customs

**Disposition :** Petition allowed

**Judgement :**

**M.M. Farced Pillai, J.**

1. Petitioner's father is a licenced gold dealer and the petitioner is conducting the business. On 10th November, 1974 his shop was inspected by the Superintendent of Central Excise, Trichur and party and seized certain items of primary gold and gold ornaments and they were confiscated under the Gold (Control) Act, 1968. Petitioner's reply to the show cause was not accepted and Ext. P-I order was passed by the first respondent confiscating the net seized items of gold under

Section 71(1) of the Act with an option to the petitioner to redeem the gold ornaments on payment of fine of Rs. 5000/- within three months from the date of receipt of the order.

2. The case of the petitioner is that the third respondent did not take any steps to dispose of the appeal filed by him for about 8 years, that he was informed as per Ext. P-2 of the posting of the appeal on 26th June, 1986 and that his counsel appeared before the third respondent on the hearing date and that it was submitted that the petitioner be allowed to redeem the gold ornaments on payment of fine of Rs. 5000/-. Third respondent passed Ext. P-6 order rejecting the appeal and confirming Ext. P-1. Petitioner contends that he is ready to pay the fine amount of Rs. 5000/- that his counsel at the time of hearing of the appeal indicated the above desire, but the appeal was rejected and as he was not intimated about it, he could not pay the same.

3. Learned counsel for the respondent submitted that registered notice was sent to the petitioner intimating him of the disposal of the appeal and he intentionally evaded the receipt of the same and therefore at this distance of time he cannot be allowed to take the stand that he is ready to redeem the gold ornaments on payment of fine. He submitted that the petitioner should have done so within three months from the date of Ext. P-6 order. Contention of the petitioner is that he did not receive the registered notice informing Ext. P-6 order and so it became virtually impossible for him to pay the fine within three months of the order.

4. Ext. R-2 (a) is the photostat copy of the registered letter alleged to have been sent to the petitioner, intimating him of the result of the appeal. Learned counsel for the respondents pointed out that Ext. R-2 (a) distinctly shows that the registered notice was sent on 16th July, 1986 and the petitioner evaded its receipt. He submitted that Section 153 of the [Customs Act, 1962](#) has been complied with as Ext. P-6 order in original was displayed in the notice board in the Customs House and so the petitioner has to be imputed with the knowledge of it.

'153. Service of order, decision, etc. - Any order or decision passed or any summons or notice issued under this Act, shall be served -

(a) by tendering the order, decision, summons or notice or sending it by registered post to the person for whom it is intended or to his agent; or

(b) if the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house'.

Thus it can be seen that notice issued under Section 153 can be sent by registered post either to the person for whom it is intended or to his agent and if it cannot be so served, the service may be effected by affixing on the notice board of the customs office. It cannot be held that it is open to the authority to take the stand that it is open to him to adopt any of the modes of service as prescribed under clause (a) or (b) of Section 153 as he deems fit. Section 153 does not allow respondents to contend that affixure of Ext. P-6 order in the notice board of the Customs House alone would be sufficient. Clause (b) clearly states that if the order, decision, summons or notice cannot be served in the manner provided in clause (a) it can be affixed on the notice board of the Customs House. The normal rule is to tender the order, decision, summons or notice or sending it by registered post to the person to whom it is intended or to his agent. Mode prescribed under clause (b) can be followed only when it is found that the order, decision, summons or notice could not be served in the manner provided in clause (a) viz. by tendering it or by sending it by registered post. Respondents cannot choose any of the modes at their sweet will and pleasure.

5. Ext. R-2 (a) shows that the notice was registered from Madras on 16th July, 1986. Admittedly there is no mistake in the address shown on the registered letter. Postal seal on Ext. R-2 (a) shows that the letter reached Kollengode Post Office on 19th July, 1986. There is an endorsement 'not known' dated 19th July, 1986. Thereafter no attempt was made to serve the notice to the addressee. From Ext. R-2(a) it is not possible to hold that it is a case where Ext. P-6 order could not be served on the petitioner. In that view of the matter contention of the respondents that publication of Ext. P-6 order on the notice board of the Customs House should be considered as sufficient notice is not tenable.

6. As there was no compliance of Section 153 petitioner's contention that he knew of Ext. P-6 order only as per Ext. P-5 communication cannot be brushed aside.

Petitioner's request to allow him to pay the penalty was turned down as per Ext. P-11 order on the ground that he did not pay the fine within the stipulated period. As I find that the petitioner cannot be attributed with the knowledge of Ext. P-6 order at any time prior to Ext. P-5 his request to redeem the gold ornaments on payment of the fine imposed upon him has to be allowed. I do so. Respondents are directed to allow the petitioner to redeem the gold ornaments referred to in Ext. P-I order on payment of the redemption fine of Rs. 5000/-.

The original petition stands allowed. No costs.

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