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**Court :** Gujarat

**Decided On :** Jun-23-1993

**Reported in :** (1993)113CTR(Guj)463

**Appeal No. :** Spl. Civil Appln. No. 7623 of 1992

**Appellant :** Competent Authority Under Safema

**Respondent :** Commissioner of Income Tax and anr.

**Judgement :**

S. D. SHAH, J. :

This petition under Art. 226 of the Constitution of India is filed by the competent authority under Smugglers & Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 for issuance of appropriate writ declaring that the order, dt. 13th June, 1991 passed by the Settlement Commission is not conclusive and final so far as the proceedings under SAFEM Act are concerned, and also for further writ directing the first respondent - the CIT not to release the silver lot of 301.203 Kgs. to the second respondent and also not to release the balance lot of silver of 1164 kgs. to the third respondent until the proceedings under SAFEM Act are finalised. The Division Bench of this Court while issuing rule nisi has granted interim relief restraining the CIT from releasing the silver lot of 301.203 kgs. to

second respondent and balance lot of 1164 kgs. to the third respondent.

2. In order to appreciate the grievance of the competent authority under SAFEM Act brief facts are stated herein :

(i) On 24th December, 1981, a search was carried out at the premises of third respondent, namely, Amrutlal Chandmal Jain under IT Act and during said search silver weighing 1465.201 Kgs. was seized. Out of said lot of silver the second respondent, namely, M/s. Agro Bullion Co. has claimed ownership of 301.203 Kgs. of silver.

(ii) It appears that with respect to aforesaid seizure of silver from the custody of third respondent proceedings were commenced before the Settlement Commission under the provisions of IT Act on 7th December, 1984. Said proceedings were admitted by the Settlement Commission.

(iii) It appears that on 18th October, 1982 an order of detention under COFEPOSA was passed against the third respondent.

(iv) On 10th October, 1985 notice under s. 6(1) of SAFEM Act was issued to all concerned for all properties including the entire lot of 1465.201 kgs. of silver.

(v) The third respondent thereupon instituted Spl. Civil Appln. No. 5684/85 so as to challenge the initiation of proceedings under s. 6(1) of SAFEM Act and the Division Bench of this Court while admitting the petition on 17th October, 1985 passed the following order :

'Rule, Notice to Attorney General. Petitioners to file an undertaking to this Court on behalf of all the petitioners that they will not dispose of or otherwise alienate the immovable properties in question and the movable properties in question which are in their possession till the final disposal of the petition. Written undertaking of the petitioners as aforesaid to be filed within two weeks from today. In view of this undertaking, pending hearing and final disposal of the petition there will be interim relief restraining the respondent No. 2 for proceeding further in pursuance of notices dt. 10th October, 1985, Annexure 'F' (collectively). Leave to amend.'

(v) It appears that since the constitutional validity of certain provisions of SAFEM Act was challenged in various High Courts an application was moved under Art. 138A of the Constitution of India for transfer of all the petitions from the High Courts to the Supreme Court of India and for stay of the proceedings pending in the High Courts and the Supreme Court called for the proceedings from all the High Courts including this Court and granted stay of further proceedings under SAFEM Act. Exact text of the order passed by the Supreme Court is not available before this Court and we do not think it is necessary to know exactly the text of the said order for the purposes of this petition.

(vi) It appears that thereafter the second respondent instituted Spl. Civil Appln. No. 310/90 before this Court challenging the action of the IT authorities of retaining his lot of silver weighing 301.203 kgs. In this petition the second respondent did not implead the SAFEM authorities as necessary party to the proceedings.

(vii) It appears that the Division Bench of this Court by judgment and order, dt. 9th November, 1990, which is at Annexure 'D' to this petition, disposed of the said petition of the second respondent directing the second respondent to apply to the Settlement Commission for being impleaded as party so as to decide his claim over the lot of silver weighing 301.203 kgs. The Division Bench of this Court, in fact, issued detailed directions to the Settlement Commission as to how and within what time the claims should be decided and the operative part of the said judgment, in so far as it is relevant, is reproduced herein :

'In short, after hearing all the concerned, the Commissioner will decide the question whether the disputed lot seized on 24th December, 1981 really belongs to the petitioner or not. We deem it fit to direct the third respondents to decide this question which is hanging fire since long, within a period of three months of receipt of writ of this order at its end. We make it clear that in case the entire settlement proceedings of the assessee-Amrutlal which would cover number of items other than the disputed item, may take more time atleast so far as the question of ownership of disputed lot is concerned, that question may be decided by following the procedure within the time limit prescribed in this judgment. It is obvious that the order of the Settlement Commission would be conclusive as per s. 245(1) as to the

matters settled in the order and if the Settlement Commission takes view that the disputed lot did not belong to the assessee, then the Department will have to restore the disputed lot to the petitioner which is claiming ownership thereto, if the Commission finds that the disputed lot belonged to the petitioner and not the assessee - Amrutlal. On the other hand, if the Commission's order is adverse to the petitioner it would be open to it to challenge the same in accordance with law.'

(viii) Since the competent authority under SAFEM Act was not impleaded as party in the aforesaid Sp. CA which was filed by the second respondent, it filed Misc. CA No. 384/91 before this Court for clarification/modification of the order dt. 9th November, 1990 passed in SCA No. 310/90.

(ix) On 26th March, 1991 the Division Bench granted the aforesaid Misc. CA by directing the competent authority under SAFEM Act to apply to Settlement Commission for being impleaded as party to the said proceedings, and further directed the Settlement Commission to consider the claim of the competent authority under SAFEM Act. Pursuant to aforesaid directions given by the Division Bench the competent authority under SAFEM Act moved an application before the Settlement Commission both for being impleaded as party to the proceedings as impleaded as party to the proceedings was granted while the request for being impleaded as party to the proceedings was granted while the request for postponement of hearing was not accepted by the Settlement Commission and the Settlement Commission thereafter passed order, dt. 13th June, 1991. In the detailed order which is passed by the Settlement Commission in para 9(v) following direction was given as regards lot of silver weighing 301.203 kgs. :

'We, therefore, hold that the order under s. 132(5) passed by the ITO, Spl. Circle II, Ahmedabad on 30th March, 1982 directing the retention of this silver (weighing 301.203 kgs. seized from Car No. DEC 87 on 24th December, 1981) must be returned to the person from whom it was seized as per the relevant provisions of IT Act. This direction is, however, subject to any orders that may have been/may be passed by the Honble Gujarat High Court in that regard with reference to the Misc. CA No. 384/91 filed by competent authority under SAFEM Act as stated above.'

(x) It appears that the competent authority under SAFEM Act thereafter received some documentary evidence from the Custom Authorities which according to the competent authority was prima facie evidence to establish that even the lot of 301.203 kgs. of silver was of the ownership of third respondent and was not of the ownership of the second respondent. Based on this new material that was available to the competent authority the competent authority recorded the reasons and issued second show cause notice, dt. 20th July, 1991. It may be mentioned that the first notice was issued by the competent authority under SAFEM Act on 10th October, 1985.

(xi) On receipt of second show-cause notice issued by the competent authority under SAFEM Act the third respondent preferred Spl. Civil Appln. No. 5900/91 before this Court challenging the legality and validity of second show-cause notice. Said petition came to be admitted by the Division Bench of this Court and was directed to be decided together with SCA No. 5684/85 which was also admitted as stated hereinabove.

(xii) It appears that since the Settlement Commission has passed order in favour of second and third respondents for releasing the lot of silver to them the competent authority under SAFEM Act by a letter of request, dt. 21st October, 1991 requested the CIT not release lot of silver to the second and third respondents until the proceedings under SAFEM Act are concluded.

(xiii) The CIT by his order, dt. 4th November, 1991 informed the competent authority under SAFEM Act that it was not possible to hold back the silver lot as suggested by the competent authority in its letter, dt. 28th Oct. 1991.

(xiv) Since the lot of silver claimed by the second respondent was not released despite the order of the Settlement Commission, the second respondent instituted Misc. CA No. 1567/91 in this Court for taking action for contempt of Court against the authorities who were not complying with the order of release of silver in his favour.

(xv) The competent authority under SAFEM Act filed CA No. 48/92 before this Court in SCA No. 5900/91 therein praying for a specific prohibitory order

restraining the CIT from releasing the lot of silver to respondent Nos. 2 and 3. The Division Bench of this Court granted the aforesaid prohibitory order in CA No. 48/92.

(xvi) In view of the specific prohibitory order passed by the Division Bench of this Court Misc. CA No. 1567/91 which was filed by the second respondent for taking action for contempt of Court came to be rejected by the Division Bench.

(xvii) It appears that since there was an order of Settlement Commission in favour of second and third respondents releasing entire lot of silver in the proportion mentioned hereinabove to the second and third respondents the competent authority under SAFEM Act was not in a position to sit tight over the said lot of silver and, therefore, it preferred SCA No. 309/92 challenging the order of the CIT, dt. 4th November, 1991 whereby he has expressed his inability to accede to the request of the competent authority to hold back silver till the SAFEM proceedings are over, and also challenging the order of the Settlement Commission, dt. 13th June, 1991 to the extent the observations were made in the said order in favour of second and third respondents. Notice to show-cause was issued in the said petition and ad interim stay was granted restraining the CIT from releasing the entire lot of silver to the second and third respondents. It appears that during the pendency of said petition some correspondence is exchanged between the CIT and the competent authority under SAFEM Act and since two authorities were inter se, passing inconsistent order the Chief CIT has even referred the matter to the Ministry of Law & Justice. It is not necessary to us to refer to the outcome of said exchange of correspondence between the two heads of the Department, but it can be said that consequent upon some instructions received by the Additional Central Govt. Standing Counsel on 8th April, 1992 the SCA No. 309/92 came to be unconditionally withdrawn. The order which is passed by the Division Bench of this Court in the aforesaid SCA reads as under :

'Mr. Jayant Patel on instructions from the office of the competent authority seeks leave to withdraw this petition as he has been given written instructions in that behalf. Written instructions dt. 7th April, 1992 are produced on record. They are to be kept on record. However, so far as the annexure to the written instructions in

the shape of opinion from the Ministry of Law & Justice is concerned as it is irrelevant it need not be kept on record and it is returned to Mr. Patel. SCA accordingly stands dismissed as withdrawn. Notice discharged. Ad interim relief vacated. No costs.'

(xviii) On 16th November, 1992 in CA No. 48/92 which was filed in SCA No. 5900/91 by the competent authority under SAFEM Act the Division Bench of this Court passed an order and the Court held that no relief as prayed for against present second respondent can be granted as no case was made out whatsoever. The Division Bench of this Court also found that the Settlement Commission has also concluded in favour of second respondent and, therefore, its claim for return of lot of silver cannot be thwarted. The Court, therefore, observed that under SAFEM Act the Court did not find any need to put the second respondent under any order restraining him. As regards third respondent, the Court also observed that same situation would prevail against the CIT acting under the order of the Settlement Commission.

(xix) It appears that in view of the observations made by the Division Bench of this High Court in the aforesaid order passed in SCA, and in view of the fact that it was not possible for the competent authority under SAFEM Act to sit tight over the entire lot of silver because of the order passed by the Settlement Commission, and further in view of the fact that the CIT was not ready and willing to retain the said lot of silver till the proceedings under SAFEM Act are finalised the competent authority under SAFEM Act found itself in a precarious position it having already withdrawn the SCA No. 309/92.

3. Under the legal advice the competent authority under SAFEM Act filed this Spl. Civil Appln. No. 7623/92 practically for the same reliefs which were prayed in SCA No. 309/92 and in this petition this Court is called upon to decide the legality and validity of the order passed by the Settlement Commission under the IT Act as well as the legality and validity of the letter addressed by the CIT to the competent authority stating his inability to accede to his request for holding back the lot of silver till the SAFEM proceedings are finalised.

4. At this stage, it will be necessary to state that the order of detention was challenged by the third respondent by instituting SCA No. 499/91 before the Court. The Division Bench of this Court by its judgment and order, dt. 28th April, 1993 has declared that the said order of detention was illegal and has quashed and set aside the same. The Division Bench of this Court has by its common judgment and order disposed of the SCA No. 5900/91 which was filed by third respondent challenging the issuance of second show-cause notice issued by the competent authority under SAFEM Act because the very foundation for initiation of SAFEM proceedings was knocked out as the order of detention issued under COFEPOSA was found to be illegal and bad in law by the Division Bench of this Court. The SCA No. 5684/85 which was instituted by the third respondent was also withdrawn by the third respondent and thus the SAFEM proceedings would come to an end as the order of detention passed against the third respondent was declared null and void by the Division Bench of this Court.

5. At the hearing of this petition, Mr. Jayant Patel, learned Central Government Standing Counsel is not in a position to dispute the position of law that the SAFEM proceedings have become infructuous subject, of course, to the right of the competent authority to challenge the order of the Division Bench of this Court before the Supreme Court of India. The position of law is clearly stated by the Supreme Court of India in the case of Union of India vs. Haji Mastan Mirza AIR 1984 SC 681. The Supreme Court said in the aforesaid case that a valid order of detention under COFEPOSA is a condition precedent to proceedings being taken under ss. 6 and 7 of SAFEM Act. If the order of detention is set aside for any reason, the proceedings taken under ss. 6 and 7 of SAFEM Act. If the order of detention is set aside for any reason, the proceedings taken under ss. 6 and 7 of SAFEM Act cannot stand. In view of the aforesaid legal position, when once the order of detention passed against third respondent is set aside by the Division Bench of this Court the SAFEM proceedings initiated under ss. 6 and 7 of the said Act must automatically come to an end and, therefore, the present petition as such has become infructuous. Not only no relief could be granted in favour of the petitioner in this petition, but in fact, request is made to this Court to see that the properties of respondent Nos. 2 and 3 which are held back at the request of the petitioner are released to respondent Nos. 2 and 3.

6. Various other reliefs which are prayed for in this petition are not gone into by this Court, inasmuch as, this petition itself has become infructuous. The question of maintainability of second petition which is also agitated before this Court by the learned counsel for second and third respondents is also not gone into as the present petition, in our opinion, has become infructuous.

7. In the result, this SCA is dismissed as infructuous. Rule is discharged. Interim relief granted by the Division Bench of this Court is vacated. No costs.

8. At this stage Mr. Patel, Learned Central Govt. Standing Counsel requests the Court that the ad interim relief granted by the Division Bench of this Court should be extended for a reasonable period so as to enable the petitioner to have further recourse to law. Said request is stoutly opposed by the learned counsel for second and third respondents. In the facts and circumstances of the case, it would be just and proper to extend the interim relief granted by the Division Bench of this Court upto 31st July, 1993 on expiry of which the interim relief granted by this Court shall automatically stand vacated even if any request from the petitioner to this Court is made for subsequent extension.

9. The office is directed to supply certified copy of this judgment to the petitioner and second respondent immediately by 28th June, 1993 (Monday).

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