

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 15TH DAY OF FEBRUARY 2012/26TH MAGHA 1933

WP(C).No. 3766 of 2012 (U)

PETITIONER(S):

P.RAKESH, AGED 28 YEARS, S/O.(LATE) P.MOHANAN,
KAYYATH ROAD,THALASSERY, PIN - 670 101.

BY ADVS.SRI.ASWIN GOPAKUMAR
SRI.PRAVEEN.H.
SRI.ANWIN GOPAKUMAR
SMT.KALA G.NAMBIAR

RESPONDENT(S):

1. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY (REVENUE),
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE,
NORTH BLOCK, NEW DELHI - 110 001.
2. THE COMMISSIONER OF CUSTOMS,
CUSTOM HOUSE, WILLINGDON ISLAND COCHIN - 682 009.
3. THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE
AND SERVICE TAX, CALICUT COMMISSIONERATE,
CENTRAL REVENUE BUILDINGS, MANANCHIRA,CALICUT - 673 001.
4. THE SUPERINTENDENT OF CENTRAL EXCISE
AND SERVICE TAX, TELLICHERRY RANGE, CENTRAL
REVENUE BUILDING, CUSTOMS ROAD, THALASSERY -670 101.

BY ADV.SRI.TOJAN J.VATHIKULAM,SC,C.B. EXCISE
SRI.THOMAS MATHEW NELLIMOOTTIL,SC,CB EXCISE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 15-02-2012, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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WP(C)NO.3766/2012

APPENDIX

PETITIONER(S) EXHIBITS

- EXT.P-1:** TRUE COPY OF ORDER (ORIGINAL) NO.37/87 DATED 11.05.1987 PASSED BY THE COLLECTOR OF CENTRAL EXCISE, CALICUT.
- EXT.P-2** TRUE COPY OF THE ORDER DATED 08.03.1989 PASSED BY THE CUSTOMS, EXCISE AND GOLD (CONTROL) APPELLATE TRIBUNAL, MADRAS.
- EXT.P-3** TRUE COPY OF THE REPRESENTATION DATED 27.11.1990 SUBMITTED BY THE PETITIONER'S GRAND FATHER.
- EXT.P-4** TRUE COPY OF THE REPRESENTATION DATED 01.03.1994 SUBMITTED BY THE PETITIONER'S FATHER.
- EXT.P-5** TRUE COPY OF THE REPRESENTATION DATED 04.04.1994 SUBMITTED BY THE PETITIONER'S FATHER.
- EXT.P-6** TRUE COPY OF THE REPRESENTATION DATED 08.10.1998 SUBMITTED BY THE PETITIONER'S FATHER.
- EXT.P-7** TRUE COPY OF THE LETTER DATED 08.05.2000 ISSUED BY THE 4TH RESPONDENT.
- EXT.P-8** TRUE COPY OF JUDGEMENT DATED 06.02.2006 IN WPC NO. 3550/2006.
- EXT.P-9** TRUE COPY OF THE JUDGEMENT DATED 03.03.2006 IN W.A. NO.427/2006.
- EXT.P-10** TRUE COPY OF THE LETTER DATED 26.07.2010 SENT BY RESPONDENT NO.4
- EXT.P-11** TRUE COPY OF THE REPRESENTATION DATED 09.09.2011 SUBMITTED BY THE PETITIONER.

RESPONDENTS' EXHIBITS : **NIL**

/TRUE COPY/

P.A.TO.JUDGE

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S.SIRI JAGAN, J.

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W.P.(C).No. 3766 of 2012

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Dated this the 15th day of February, 2012

J U D G M E N T

Certain gold has been seized from the petitioner's father under the erstwhile Gold (Control) Act. Ultimately, it was confiscated, but giving the petitioner's father option to redeem the gold by paying redemption fine and the confiscation was confirmed by the Customs, Excise and Gold (Control) Appellate Tribunal, Madras. But the petitioner's father did not opt to redeem the gold by paying the fine. That was on 8.3.1989. After 16 years, the petitioner's father approached this Court seeking redemption of the gold. By Ext.P8 judgment in W.P.(C).No.3550/2006, a learned Judge of this Court repelled the contentions of the petitioner on account of unexplained delay and laches. The petitioner's father challenged the same before a Division Bench of this Court in appeal and suffered Ext.P9 judgment of dismissal. That was on 3.3.2006. After six years hence, the Superintendent of Central Excise and Service Tax, Tellichery Range, issued Ext.P10 notice directing the petitioner's father to intimate whether he is ready to remit the redemption fee and any other dues imposed on him for release of the gold ornaments under seizure. The petitioner has filed Ext.P11 representation also in this regard. It is under the above circumstances, the petitioner has filed this writ

petition seeking the following relief:

"issue a writ of mandamus or such other appropriate writ, direction or order commanding respondents 1 to 4 to return the gold confiscated by Ext.P1 order and in respect of which the petitioner has preferred Ext.P11 representation."

I am of opinion that after having suffered Exts.P8 and P9 judgments, the petitioner has not even an iota of right left in respect of the gold seized. The gold has already become the property of the Government 22 years ago. The Superintendent had no business to issue Ext.P10 notice in this regard after 22 years, that too, six years after Ext.P9 judgment. In the peculiar circumstances of the case, if anybody suspects some ulterior motive on the Superintendent or anybody who has directed him to issue Ext.P10 notice, the same cannot be said to be far fetched. I am saying this because there are several cases pending before me, in which, officers of the Customs Department steadfastly refuse to refund fine and penalty despite appellate orders in favour of assessees under the Customs Act. That being so, when such a Department, after 22 years, voluntarily offers an opportunity to an assessee to redeem gold which has already become the property of the Government, it would certainly give rise to strong suspicion of bad motives, especially in view of the enormous increase of value of gold in the recent years. In the above circumstances, I do not find any merit or bonafides in this writ petition. Accordingly, this writ petition is dismissed with a direction to the 1st

respondent to see that the other respondents do not give away property of the Government in such manner.

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Sd/-
S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge