

(1951) 11 GAU CK 0009
In the Gauhati High Court
Case No : Civil Rule No. 82 of 1951

Aswini Kumar Sinha and Another

APPELLANT

Vs

Deputy Collector of Central Excise and Land Customs,
Shillong

RESPONDENT

Date of Decision : 19-11-1951

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1951) 11 GAU CK 0009

Hon'ble Judges : T.V. Thadani, C.J.;Haliram Deka, J

Bench : Division Bench

Advocate : S.K. Ghose and P. Choudhury, for the Appellant; D.N. Medhi,
Government Advocate, for the Respondent

Judgement

Thadani, C.J.—This is an application purporting to be an application under Article 226 of the Constitution of India, asking for a writ of certiorari to be issued to the Deputy Collector of Central Excise and Land Customs, Shillong, quashing his order, dated 28.10.50. The order is in these terms:-- "I, therefore under sec. 167(8) of Sea Customs Act, 1878, read with sec. 9 of Land Customs Act, 1924, order confiscation of the gold and silver. There may be redeemed by the party under Sec. 183 of the Sea Customs Act, 1878, on payment of a fine of Rs. 15,000 plus import duty due and a personal penalty of Rs. 500. The fine should be deposited into a Government Treasury under the head "I--Customs--Land Customs, fees, fines, forfeiture & Misc., by an ordinary chalan form duly countersigned by a Departmental Officer or supported by a copy of this order. Sd/- A.N. Nanda, Deputy Collector of Central Excise & Land Customs, Shillong." It is not disputed by the learned Advocate for the petitioner that the gold and silver confiscated were confiscated in the town of Agartala in the State of Tripura. In view of paragraph (f) of clause (2) of rule 2 of the rules framed u/s 37 of the Central Excise and Salt Act of 1944 (Act 1/44), a Collector for the States of Assam, Tripura and Manipur means the Collector of Central Excise at Shillong. It is admitted that the Deputy Collector, Mr. A. N. Nanda, is a Collector of Central

Excise and Land Customs at Shillong, within the meaning of paragraph (f) of clause (2) of rule 2. Mr. Medhi has raised a preliminary objection, gamely, that the application under Article 226 of the Constitution of India is incompetent by reason of the fact that the powers of the High Court under Article 226 of the Constitution of India have to be exercised throughout the territories in relation to which it exercises jurisdiction, and that it can sue to any person or authority exercising judicial or quasi-judicial powers an appropriate writ within those territories; as the Collector of Central Excise, Shillong, seized the gold and silver within territories outside the jurisdiction of this Court, this Court is not competent to issue a writ of certiorari under Article 226 of the Constitution of India. Mr. Ghose on the other hand contends that although the territory in which the silver and gold were seized by the Deputy Collector is outside the jurisdiction of this Court, nevertheless by reason of the fact that the Deputy Collector has been living in Shillong and is a Collector for Shillong under the Sea Customs Act, this Court is competent to issue a writ of certiorari to him. If this argument were accepted, it would lead to an anomalous position, for instance, a Deputy Commissioner of Pakistan might seize contraband goods within the territory of Pakistan and then come to Shillong for a holiday. Would this Court be competent to issue a writ of certiorari to him merely because he happens to be present within the jurisdiction of this Court ? We do not think so. The prerequisites for the exercise of the power of a High Court under Article 226 of the Constitution of India are (1) that the territories in which the act is alleged to be done is done within the territories over which the High Court has jurisdiction, (2) that the person against whom a writ is sought must have exercised judicial or quasi-judicial functions in the territories which are subject to, the jurisdiction of this Court.

2. It is obvious that the Deputy Collector in this case exercised the alleged judicial or quasi-judicial functions not within the territories over which this Court has jurisdiction, but in a territory over which this Court has no jurisdiction. For these reasons, the preliminary objection prevails and the petition is returned to the petitioner for presentation to the proper Court.

Deka, J.

I agree.