

(1951) 11 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 82 of 1951

Aswini Kumar Sinha and another	Vs	APPELLANT
Dy. Collector of Central Excise and Land Customs, Shillong		RESPONDENT

Date of Decision : 19-11-1951

Acts Referred:

Constitution of India, 1950 — Article 226, 236

Citation : AIR 1952 Guw 91

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, Govt. Advocate, for the Respondent

Judgement

Thadani, C.J.—This is an application purporting to be an application under Art. 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 28-10-1950. The order is in these terms :

I, therefore, trader S. 167(8) , Sea Customs Act 1878 read with S. 9, Land Customs Act, 1924, order confiscation of the gold and silver. These may be redeemed by the party under S. 183, Sea Customs Act, 1878, on payment of a fine of Rs. 15000 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 and 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 and 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 para, (f) of cl. (2) of R. 2 of the rules framed under S. 37, Central Excise and Salt Act of 1944 (Act 1/44), a Collector for the State 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 para. (f) of cl. (2) of R. 2.

2. Mr. Medhi has raised a preliminary objection namely that the application under Art. 226 of the Constitution of India is incompetent by reason of the fact that the powers of the High Court under Art 226 of the Constitution of India have to be exercised throughout the territories in relation to which it exercises jurisdiction, and that it can issue 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 Art. 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 powers of a High Court under Art. 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.

3. 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.

4. I agree.