(1956) 01 GAU CK 0012

In the Gauhati High Court

Case No : Civil Miscellaneous Writ Application No. 5 of 1955

Balchand Patni APPELLANT

Vs

Officer-in-charge Customs, Agartala and another RESPONDENT

Date of Decision : 10-01-1956

Acts Referred:

Constitution of India, 1950 — Article 226, 31
Sea Customs Act, 1878 — Section 181

Citation : (1956) 01 GAU CK 0012

Hon'ble Judges : Brij Narain, J.C.

Bench : Single Bench

Advocate : K.C. Chakravorty and M.R. Choudhury, for the Appellant; P.K. Bhattacharjee, Govt. Advocate, for the Respondent

Judgement

Brij Narain, J.C.

1. This is an application on be. half of Balchand Patni for obtaining a Writ of Certiorari or a. Writ of like nature quashing the order of seizure dated 19-9-1955.

A rule nisi was issued by this Court on 3-10-1855 directing respondent 1 to show cause why the aforesaid order of seizure be not set aside.

2. The petitioner has alleged that he is a citizen of the Union of India and he is the owner of three bars of Indian gold seized by respondent 1 on 19-9-1955 at Agartala Air Port from one Kalyanmal Jain who was carrying the same on behalf of the petitioner by the Air Service No. 256 from Imphal to Calcutta. According to the petitioner the said gold was purchased in India by his father late Premsukh Patni before the World War II and he kept the same in Beri, Jaipur State before his death.

The petitioner''s mother is stated to have sent five gold bars to the petitioner and his brother Dipchand Patni of 49, Nalini Seth Road, Calcutta wanted the said bars of gold for manufacturing ornaments for his marriage and so the petitioner thought of sending four bars keeping one with him but later on he changed his mind and sent three only but in the letter, which was written to Dipchand Patni on this occasion, four bars were stated to have been sent and the remaining fifth was directed to be purchased from Gauhati and Kalyanmal Jain who was going to Calcutta with Rs. 53,000/- was entrusted with three gold bars for taking them to. Calcutta by Plane.

The letter which was given to Kalyanmal Jain, by mistake contained another slip to the effect that the words "to be purchased" before the words "at Gauhati'' were omitted.

3. Kalyanmal Jain on reaching Agartala Air Port got down from the aircraft and he went for refreshment when respondent 1 asked him as to what goods he had been carrying. Kalyanmal Jain immediately stated in reply that he was carrying (1) three bars of gold, (2) Rs. 53,000/- (3) one hand bag made of hessian cloth and (4) the letter referred to above. Respondent 1 requisitioned him to produce these articles and Kalyanmal Jain produced one bar of gold from the waist cloth, another from his pocket and the third along with Rs. 53,000/- and the said letter from his hand bag.

After seizing these articles, it is alleged that respondent 1 forcibly attempted to make the said Kalyanmal Jain stark naked for the purposes of search whereupon he required respondent 1 to take him, previous to search before a Magistrate, but respondent 1 refused to do that and he forcibly began to search his body but nothing incriminating was found. A ''detention receipt Ex. 1 was given after a photograph of Kalyanman Jain had been taken but in the detention receipt no mention was made of the aforesaid letter.

According to the petitioner Kalyanmal Jain requested respondent 1 to enter the aforesaid letter in the detention receipt but even then no entry was made. Kalyanmal Jain was never asked to produce any permit but, according to the petitioner, he was threatened by respondent 1 and he was made to write a statement in his own hand according to the dictation of respondent 1 under coercion.

4. Kalyanmal Jain, immediately after the seizure of gold, sent a wire Ex. 2 to the petitioner and when he did not receive any reply to it, he sent another wire on 20-9-1955 Ex. 3. Kalyanmal Jain asked for a copy of the statement which had been taken from him under coercion from respondent 1 on 20-9-1955 but the latter took advantage of the accidental mistakes in the letter referred to above and enquired of him as to where was the fourth bar of gold secreted and what was the address in Gauhati where other goods were kept and he declined to give Kalyanmal Jain a copy of this statement made under coercion.

5. Sri Kameswar Misra, Pleader and Sri Bansidhar Agarwalla an officer of the petitioner, who was fully conversant with all the facts relating to the gold in question reached Agartala by plane on 20-9-1955 and the original memorandum of agreement dated 12-12-1943 Ex. 4 relating to this gold was also brought by them.

According to the petitioner these two persons appeared before respondent 1 and asked for an opportunity of being heard about gold and demanded the statement in writing of the reason for such seizure under S. 181, Sea Customs Act 1878 but respondent 1 declined to do anything in the matter and so Sri Kameswar Misra could not produce the memorandum of agreement before the Customs authorities nor could Bansidhar Agarwalla be examined before them to prove that the gold in question belonged to the petitioner''s father from long before.

6. According to the petitioner respondent 1 acted arbitrarily in this case and in violation of the principles of natural justice by disregarding and ignoring the provisions of the Land Customs Act 1924 & the Sea Customs Act 1878 and thereby there has been a violation of the petitioner''s fundamental rights guaranteed under Art. 31 of the Constitution of India. The petitioner sent a registered letter on 24-9-1955 demanding return of his gold but no reply was sent up till the filling of the present writ petition in this Court.

As respondent 1 is stated to have acted in breach of law and in contravention of his duties and obligations as Customs Officer by seizing the said gold without making any enquiry as to whether the same had been brought from any foreign territory or not and without giving the petitioner an opportunity of being heard and declining to give any statement of reason for such seizure under S. 181, Sea Customs Act, the petitioner has prayed that the illegal order of seizure dated 19-9-1955 should be quashed by this Court under Art. 226 of the Constitution of India.

7. The respondents have contended that on 19-9-1955 at about 12-30 P. M. when the aircraft (Passengers'' Service No. 256 - Imphal to Calcutta) landed at Agartala Air Port respondent 1 and Sri H. C. Paul another inspector of Central Excise and Land Customs were on duty and they saw Kalyanmal Jain getting down from the plane and going straight to the Air Port canteen with a ration bag in his hand and as his movements were highly suspicious, he was followed by these inspectors, Kalyanmal Jain in tre meantime took his seat in the canteen to take his lunch but he suddenly stood up seeing these inspectors and he went away by the back door of the canteen.

Respondent 1 and his companion continued following him and confronted him in the passengers'' lounge and on being interrogated Kalyanmal Jain gave incorrect details of the articles which were with him as he has first stated that he had only 50,000/- in Indian currency notes with him but gradually he had to admit that his bag contained a number of silver coins when he was taken to the Customs office he whispered in a quivering voice that the bag contained a small piece of gold also.

The bag was then searched in the presence of Sri Salil Kumar Bardhan, Fuelling Superintendent of B. O. C. and Sri Sachindra Kumar Choudhury, Officer-in-Charge, Senaihant Police out-Post and one heavy bar of gold wrapped up by a paper and kept concealed under the currency notes was then recovered but no silver coins were found. Later on when the attention of Kalyanmal Jain were drawn to the effect that there seemed to be something in his pocket, he took out another gold bar from his pocket.

8. Respondent 1 informed the Deputy Superintendent of Central Excise and Land Customs (Sri A. B. Gupta) on phone and the latter directed him to take the passenger along with goods to the office of the Central Excise and Land Customs, Agartala. Kalyanmal Jain was accordingly taken there and Sri Gupta interrogated him and asked him to produce all the papers he had with him whereupon he produced a letter Ex. A-1 and as this letter disclosed that the passenger had another gold- bar with him, Kalyanmal Jain assured that he had no other gold and so his person was searched by the Deputy Superintendent through the respondent 1 and the third bar of gold was recovered wrapped up in a piece of cloth and tied around the waist of the passenger.

The Deputy Superintendent then asked Kalyanmal Jain to make a statement in writing in respect of the goods he was carrying and then the statement was written out by Kalyanmal Jam in the presence of three independent witnesses and it was submitted to the Deputy Superintendent.

According to the respondents this statement clearly disclosed that the petitioner was dealing in contraband gold and the gold which had been seized in this case was also contraband.

Sri Santosh Kumar Karmakar of M/s. Indian Jewellery House, Agartala was then sent there and he examined the gold in question and he gave his opinion that this gold was not of Indian origin. The currency notes recovered from Kalyanmal Jain were then counted and they were found to be of Rs. 53.000/- and not merely Rs. 50,000/-. As this gold was according to the respondents suspected to be contraband, its seizure was legal and the present petition is stated to be premature as there has been no final adjudication by the competent Customs authority so far, and the matter is still under investigation.

The respondents are not in a position upto this time to admit that this gold was purchased in India or that it really belongs to the petitioner. The allegations of the petitioner regarding respondent 1 forcibly attempting to make Kalyanmal Jain stark naked for the purposes of search and of obtaining statement from him under coercion are emphatically denied. It has also been denied that Sri Kameswar Misra and Sri Bansidhar Agarwalla ever asked for any opportunity to be heard about this gold or that they ever demanded reasons for seizure of gold in writing from respondent 1.

Respondent 1 admits to have received the petitioner''s letter dated 24-9-1955 but its reply appears to have been given on 1-10-1955 informing the petitioner that he should make correspondence with the Superintendent of Land Customs, Agartala 1 Circle, P. O. Agartala with whom the gold in question had been deposited. Respondent 1 has further denied that he has acted in breach of law or in contravention of his duties" and obligations as Customs officer by seizing the said gold without making any enquiry as to whether the same was brought from any foreign territory or not.

9. The petitioner has contended that he is the owner of the three gold bars weighing 116 tolas 9 annas, 129 tolas 5 annas 3 rotis and 121 tolas 8 annas in all 367 tolas 6 annas 3 rotis in question and he has tried to prove his ownership by producing the agreement deed dated 12-12-1943; vide Ex. 4. Paragraph 2 of the affidavit filed by the petitioner suggests that he had entrusted these three bars of gold to Kalayanmal Jain on 19th September for being taken to Calcutta to his brother Dipchand Patni of 49, Nalini Seth Road, Calcutta for the purpose of manufacturing ornaments for the latter''s marriage.

Kalyanmal Jain has also filed an affidavit in this Court and paras 1 and 2 of this affidavit show that he had to go to Calcutta with Rs. 53,000/- and hearing this the petitioner entrusted him with three gold bars and a letter Ex. A-1 to be given over to his brother Dipchand Patni. Kalyanmal Jain started from Imphal to Calcutta by Air Service No. 256 on the aforesaid date and as soon as this Plane reached Agartala he went down for refreshment and he was later on interrogated by the officer-in-charge, Customs, Agartala Air Port and then two gold bars were seized at the Air Port and one in the office of the Deputy Superintendent, Customs.

According to the petitioner respondent 1 seized these gold bars illegally and the order of detention is said to be without jurisdiction. It is, therefore, to be seen how far are the contentions of the petitioner correct. (10) Section 19, Sea Customs Act 1878 runs as follows;

The Central Government may from time to time, by notification in the Official Gazette, prohibit or restrict the bringing or taking by sea or by land goods of any specified description into or out of the States across any customs frontier as defined by the Central Government.

Section 169 of the same gives power to search on reasonable suspicion and it runs as under:

Any officer of Customs duly employed in the prevention of smuggling may search any person on board of any vessel in any port in India, or any person who has landed from any vessel:

Provided that such officer has reason to believe that such person has dutiable or prohibited goods secreted about his person.

Section 9, Land Customs Act 1924 provides that the provisions of the Sea Customs Act which are specified in the schedule, together with all notifications, orders, rules or forms issued, made or prescribed thereunder, shall so far as they are applicable, apply for the purpose of the levy of duties of land customs under this Act in like manner as they apply for the purpose of the levy of duties of customs on goods imported or exported by sea.

The schedule appended to this section clearly provides that Ss. 167 and 169, Sea Customs Act would be applicable for the levy of duties of land customs under S. 9. These provisions clearly show that respondent 1 had power to search on reasonable suspicion and under S. 173 he had further power to arrest any person against whom a reasonable suspicion existed that he had been guilty of an offence under the Sea Customs Act, 1878.

Section 167 has also been made applicable to the proceedings under the Land Customs Act under S. 9 and item No. 8 of S. 167 provides that if any goods, the importation or exportation of which is for the time being prohibited or restricted by or under Chapter 4 of this Act (Ss. 18 and 19), be imported into or exported from India contrary to such prohibition or restriction

such goods shall be liable to confiscation and any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding thousand rupess.

Supplementary Land Customs Manual Shillong, Part II, Chapter II, para 108 provides:

Statement should be recorded in the first person in presence of independent witnesses, whose attestations should be obtained on the statements. The accused should write his statement himself if he is literate and should sign himself with his address. In case he is illiterate, his thumb impression and address should be taken by the seizing officer in presence of the witnesses. The following points should be borne in mind when recording the statement of any person contravening the section:

(1) his father''s name;

(2) his complete address both In India and adjoining territories, if any;

(3) his profession;

(4) the circumstances leading to the seizure.

A thorough enquiry into every case is an essential preliminary to the proper adjudication of the case.

The statement of Kalyanmal Jain was recorded in this case under the provisions of the above mentioned para.

Para 107 of the same Chapter provides the procedure for seizure and it runs as follows;

Any goods which are passed or attempted to be passed in contravention of the provisions of S. 5 of the Land Customs Act (which provides for permit for goods-passing across frontier), shall be detained and seized. The Land Customs front being wide open smugglers at times may not be detected at the point of Import or Export but the goods are seized either at the premises of the smugglers or in transit to other places in Indian Dominion. Detecting officers should note that immediately after seizure the investigation of each should be completed.

11. It has been contended by the learned Advocate for the petitioner that as there is prohibition regarding importation and exportation of gold in the Sea Customs Act, respondent 1 could not seize the gold in question in accordance with the provisions of the aforesaid Act. Section 18, Sea Customs Act gives a list of all the goods including piece goods against which prohibitions and restrictions have been imposed but this section does not specifically mention gold nor has gold been mentioned under S. 167 and so it has been contended that no action could be taken by respondent 1 in this case regarding the gold in question.

12. On behalf of the respondents it has been urged that restrictions on import and export of certain currency and bullion have been imposed by the Central Government by S. 8 (1), Foreign Exchange Regulation Act 1947 as amended (Act 7 of 1947) which runs as follows;

(1) The Central Government may, by notification in the official Gazette, order that, subject to such exemptions, if any, as may be contained in the notification no person shall except with the general or special permission of the Reserve Bank and on payment of the fee, if any, prescribed bring or send into these States any gold or silver or any currency notes or bank notes or coin whether Indian or foreign.

Notifications G. I. M. P. Notification No. 12 (11) - P. I./48, dated 25-8-1948 and No. 12 (11)- F. I./51, dated 27-2-1951 have been issued under these sections superseding the notification of the Government of India No. 12 (11) - P. I./47 dated 25-3-1947 and by the notifications referred to above the Central Government has been pleased to direct that, except with the general or special permission of the Reserve Bank, no person shall bring or send into the States from any place outside India-

(a) any gold coin, gold bullion, gold sheets or gold ingot, whether refined or not; or

(b) any silver bullion, any silver sheets or plates which have undergone no process of manufacture subsequent to rolling or any current silver coin

Section 23A of the same Act has been relied upon to show that the customs officers under the Land Customs Act and Sea Customs Act are empowered to take actions under the notification referred to above. Section 23A, Foreign Exchange Regulation Act 1947 runs as follows.

Without prejudice to the provisions of S. 23 or to any other provision contained in this Act, the restrictions imposed by sub-ss. (1) and (2) of s. 8, sub-s. (1) of S. 12 and C. (a) of sub-s. (1) of S. 13 shall be deemed to have been imposed under S. 19, Sea Customs Act, 1878 (8 of 1878), and all the provisions of that Act shall have effect accordingly, except that S. 183 thereof, shall have effect if for the word ''shall'' therein the word ''may'' were substituted.

13. This section clearly shows that the restrictions imposed regarding gold under S. 8 (1), Foreign Exchange Regulation Act, 1947, are deemed to have been imposed under S. 19, Sea Customs Act and the Custom officers are competent to exercise all the powers which have been conferred on them by Ss. 169, 173, 178, 181-A, etc and so respondent 1 could on reasonable suspicion, for the purpose of prevention of smuggling, search Kalyanmal Jain at the Air Port, Agartala on 19-9-1955 and he could also seize any goods which he believed to be smuggled.

If these bars were seized on the ground that they were smuggled goods, vide the reasons clearly mentioned in the detention receipt Ext. 1, such seizure would not legally be deemed to infringe the fundamental rights under Art, 31 of the Constitution of India as this seizure would be deemed to be during the course of the exercise of the police power and not of the power of Eminent Domain or of Taxation: vide - ''A. K. Gopalan v. State of Madras'', 1950 SC 27 (AIR V 37) (A), and the following observations of Das J., at page 61, para 74 in - ''Charanjit Lal v. Union of India'', 1951 SC 41 (AIR V 38) (B).

Therefore, it will be necessary to consider first whether the share-holder or the company has been deprived of his or its property by authority of law under Art. 31 for, if he or it has been so deprived, then the question of his or its fundamental right under Art. 19 (1). (f) will not arise.

Vide also ''Ram Singh v. State of Delhi'', 1951 SC 270 (272) (AIR V 38) (C); - ''Suryapal Singh v. U. P. Government'', 1951 All 674 (681 and 690). (AIR V 38) (FB) (D); - ''Dwarkadas Sriniwas v. Sholapur Spg. & Wvg. Co. Ltd.'', 1951 Bom 86 (AIR V 38) (E); and - ''Dwarkadas Shrinivas v. Sholapur Spg. & Wvg. Co. Ltd'', 1954 SC 119 (AIR V 41) (F); - ''Abdul Majid v. P. R. Nayak'', 1951 Bom 440 (AIR V 38) (G); - ''Suhindra Nath v. Sailendra Nath'', 1952 Cal 65 (AIR V 39) (H); and -''Md. Safi v. State of West Bengal'', 1951 Cal 97 (AIR V 38) (I).

14. It has been contended by the learned Advocate for the petitioner that as respondent 1 has not produced any telegram or other message showing that he had received information that Kalyanmal Jain was smuggling gold, it should be inferred that respondent 1 had no reason to believe that Sri Kalyanmai Jain had any dutiable or prohibited goods secreted about his person.

It has further been urged that as the respondents have, even in their cause shown, not stated that the petitioner is not the owner of the gold in question it should be inferred that the seizure was illegal. The respondents have produced a copy of the diary Ex. A-2 and also the seizure report Ex. A-3 to which is appended brief narration of the case. These documents clearly show that while respondent 1 was on duty on 19-9-1955 at about 12-15 P. M. with Shri Pal three persons from Pakistan were searched and at 12-30 P. M. the aircraft (passengers'' Service No. 256-. Imphal to Calcutta) landed at Agartala Air Port.

The Customs officers have experienced that generally in transit passengers seldom come down from the Plane with any luggage but Sri Kalyanmal Jain got down from the Plane with a hessian bag in his hand with particular care of the bag and he went straight to the Air Port canteen. As he went to the canteen straight the customs officers thought that he was an in-transit passenger, he should not have carried any bag with him to the canteen and so they went to the canteen and perceived that Sri Kalyanmal Jain felt some sort of uneasiness after marking the customs officers.

On seeing the customs officers in the canteen he stood up and went to the passengers'' lounge where he was noticed to have become a bit restless and he stood up. At the very moment he was challenged and was asked to give his name. He then gave his name as Sri Kalyanamal Jain and stated that he was going from Imphal to Calcutta. He further stated that he is carrying Rs. 50,000/- in Indian currency in his bag but as the bag appeared to be heavy he was further interrogated and then he changed his version and said that if contains silver coins also. He, however, emphatically denied that there was anything else in the bag.

These circumstances created reasonable suspicion in the mind of respondent 1 and I think he was justified in stopping Sri Kalyanmal Jain for interrogation. He was then taken to the Customs Office for proper checking. When his hand bag was going to be searched he got nervous and whispered near the ears of respondent 1 in quivering voice that the bag contained a small piece of gold also.

The bag was then searched and at the bottom of the bag one heavy bar of gold of rectangular shape wrapped by paper and kept concealed beneath the Indian currency notes was found. Sri Kalyanmal Jain was further interrogated as to whether he had any other gold piece but he denied. But another gold bar of similar type similarly wrapped by papers was found from his pocket, in the presence of Sri Salil Kumar Bardhan, Fuelling Superintendent of B. O. C, and Sri Sachindra Kumar Choudhury, Officer-in-Charge, Senaihani Police Out-post.

It was noticed that Shri Kalyanmal Jain got very nervous and so he was not searched further but was taken to the office of the Deputy Superintendent where the third bar was recovered. The affidavit of Shri Saroj Banerjee shows that all these facts are correct and as the statement of Shri Kalyanmal Jain Ex. A 4 shows that this witness was present when the statement was recorded there can be no duobt on the point that this witness was actually present at the time of the search also. He is a disinterested witness and so there appears to be no good reason for disbelieving his affidavit.

The statement of Kalyanmal. Jain Ex. A-4 further shows that he had come to know that the petitioner was getting gold from Burma. Shri San-tosh Kumar Karmakar of M/s. Indian Jewellery House, Agartala was then called to examine the gold bars in question and when he gave his opinion that this gold was not of Indian origin, I think respondent 1 had sufficient reason for believing that this gold might be smuggled. He did not believe that Kalyanmal Jain was its owner and so he did not proceed against him but the seized gold could be proceeded against legally: vide - ''Shew Pujan Rai Indrasan Rai Ltd. v. Collector of Customs'', 1952 Cal 789 (AIR V 39) (J), which lays down that smuggling is nothing, but importation or exportation of goods secretly or clandestinely without payment of duty and it is covered by the wordings of Cl. (8) of s. 167.

It has further been laid down that S. 167 (8) imposes the penalty on the goods themselves. An order of confiscation can be properly and validly made in respect of the goods without finding any person actually guilty of unlawfully importing or smuggling such goods. If of course such person can be detected and his implication is established then personal pecuniary penalty can be imposed upon him also. Respondent 1 was, therefore, justified in stopping Kalyanmal Jain for interrogation and seizure of gold was also justified as the Customs authority is believed on sufficient ground that it was a smuggled gold from Burma.

15. It has been contended that the procedure laid down by law was not followed and the petitioner''s case was gravely prejudiced on account of evasion of the procedure laid down in S. 23, Foreign Exchange Regulation Act. The ruling referred to above shows that if a person is charged for contravening of any provision of the Foreign Exchange Regulation Act and it is proposer) to put him on his trial for such contravention, such trial has to take place in a Court of law.

Further a complaint has to be made in writing by a person who is specially authorised in this behalf by the Central Government or the Reserve Bank and before such complaint is made the person accused of the offence must be given an opportunity of showing that he had permission when he is accused of contravening a prevision or rule of the Act which prohibits the doing of an act without permission.

In the present case proceedings have not been started against any person so far and as it has been clearly held that S. 23, Foreign Exchange Regulation Act does not exclude the operation of S. 182, Sea Customs Act, it is clear that the case of the petitioner has not been prejudiced as steps are being taken by the respondents only against the offending goods and no order of confiscation has been passed so far. The contention that Sri Kalyanmal Jain was not taken before any Magistrate has thus no force.

16. It has been argued that no hearing was given to Sri Kameswar Misra, Vakil and no reasons for seizure were given, but sufficient reasons have been given in the detention receipt Ex. 1 itself. There is no doubt that Sri Kameswar Misra has given an affidavit in this case but this affidavit has been rebutted by the counter-affidavit of respondent 1.

As the documentary evidence produced by the respondents fully establishes that all the proceedings were regular & in the presence of independent witnesses, and the Deputy Superintendent A. B. Gupta, there could have been no reason for respondent 1 refusing to give a statement in writing of the reasons for seizure under S. 181, Sea Customs Act. The petitioner has punctiliously avoided making reference to the presence of the Deputy Superintendent during the course of investigation.

17. The respondents'' case finds ample support from the letter Ex. A-1 which was recovered from Kalyanmal Jain. This letter shows that certain mysterious words like "I. C. P., Banaj, Rassagolla etc., have been used and the following sentences are also very significant.

(a) Since it is an extremely risky work, it has to be done very carefully. As a result of haste if something wrong happens, then what a troublesome affair it will be later on.

(b) These days in. Gauhati nobody dares to purchase the goods. If anybody takes, does not pay the money before 15 to 20 days, thus causing us great difficulty.

(c) We could not send the pieces through our own man, because there is lot of checking in regard to such goods.

(d) We have no courage to send the goods in one lot.

(e) Because the risk involved is far more than the profit made in the transaction.

The argument that this letter shows that the transaction in question was not above board thus seems to be probable. The fact that this letter was not specifically mentioned in the detention receipt by sheer mistake does not, in my opinion, affect the merits of this case at all.

Similarly, the fact that the respondents gave a reply to the petitioner''s letter dated 24-9-1955 on 1-10-1955 is also not of any material importance, when para 3 of Bansidhar Agarwalla''s affidavit referring to para 8 of the cause shown regarding para 7 of the petition clearly shows that the petitioner''s version regarding respondent 1''s refusal to give reasons for detention is wholly incorrect as Bansidhar was informed by Kalyanmal Jain that respondent 1 declined to give a hearing to Sri Kameswar Misra when Para 7 of the petition shows that Bansidhar Agarwalla was himself present there on that occasion.

18. While exercising its jurisdiction under Art. 226 of the Constitution the High Court does not function as a Court of Appeal. it is only when the order of the inferior Tribunal or body is a speaking order and there is an error of law on the face of the record that the Superior Court, has power to quash it by Certiorari writ: vide - ''Shew Pujan Rai Indrasan Rai Ltd. v. Collector of Customs'', (J), referred to above (head note D).

So long as principles of natural justice are observed and the Customs authorities have given a "fair opportunity to those who are parties in the controversy, to correct or contradict any relevant statement prejudicial to their view" they have discharged the obligation or duty cast upon them- by the Statute.

19. In the present case it has been established that the Customs authorities are proceeding against the goods on sufficient grounds and so the present petition

cannot succeed even though it may not be premature. It is not necessary to go into the question of ownership of these gold bars in detail in these proceedings, at this stage, as it might prejudice one party or the other, in any subsequent litigation. As it has been established in this case that the seizure was legal, the present writ petition fails and it is hereby rejected with costs to the respondents.

