(1985) 01 PAT CK 0026

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2596 of 1979

Batta Krishna Saha and Another APPELLANT

Vs

The Union of India (UOI) and Others RESPONDENT

Date of Decision : 29-01-1985

Acts Referred:
Customs Act, 1962 — Section 136

Citation : (1986) 7 ECC 123 : (1985) PLJR 619

Hon'ble Judges : B.P. Jha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.P. Jha, J.—In this writ petition, these petitioners have prayed for quashing Annexures-5, 6 and 7.

2. Annexure-5 contains an order of the Collector, Central Excise; Annexure-6 contains an appellate order; and Annexure-7 contains an order of the revisional authority. By these impugned orders, the authorities have confiscated primary gold seized from the residential premises of the petitioners and have further imposed a penalty of Rs. 2,000 u/s 74 of the Gold (Control) Act, 1968 (hereinafter referred to as "the Act").

3. The relevant facts are these:

On 14th November, 1975, the Central Excise Officers of Patna Central Excise Division searched the residential house of the petitioners. In course of search, they recovered two pieces (one piece being Jaipuria, engraved on it "Bank of India Co. Bullion Merchant, London"), weighing 16 tolas 12 annas equivalent to 195.368 grammes.

4. Learned Counsel for the petitioners contends that a family is allowed to keep 4,000 grammes of gold in view of exemption granted u/s 16(5)(b)(ii) of the Act. It is for this reason it is contended by the learned Counsel for the petitioners that

as the petitioners were not in possession of gold in excess of 4,000 grammes, as such the confiscation and imposition of penalty are illegal.

5. It is relevant to quote certain definitions which are quoted here in below:

2. Definitions.--In this Act, unless the context otherwise requires,--

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(b) ''article'' means anything (other than ornament) in a finished form, made of, manufactured from, or containing, gold, and includes--

(i) any gold coin,

(ii) broken pieces of an article;

but does not include pirmary gold;

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(j) ''gold'' means gold, including its alloy (whether virgin, melted or re-melted, wrought or unwrought) in any shape or form, of a purity of not less than nine carats and includes primary gold, article and ornament;

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(p) ''ornament'' means a thing, in a finished form, meant for personal adornment or for adornment of any idol, deity or any other object of religious worship, made of, or manufactured from, gold, whether or not set with stones or gems (real or artificial), or with pearls (real, cultured or imitation) or with all or any of them, and includes parts, pendants or broken pieces of ornament.

Explanation.--For the purposes of this Act, nothing made of gold, which resembles an ornament, shall be deemed to be an ornament unless the thing (having regard to its purity, size, weight, description or workmanship) is such as is commonly used as ornament in any State or Union territory;

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(r) ''primary gold'' means gold in any unfinished or semi-finished form and includes ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires;

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6. On a perusal of these definitions, it is clear that these definitions deal with three types of gold, namely, ornaments, articles and primary gold. Section 8(1) of the Act prohibits to own or to possess or to receive or to buy any primary gold. It is relevant to quote Section 8(1) of the Act which runs as follows:

8. Restrictions regarding acquisition, possession and disposal of gold.--

(1) Save as otherwise provided in this Act, no person shall--

(i) own or have in his possession, custody or control, or

(ii) acquire or agree to acquire the ownership, possession, custody or control of, or

(iii) buy, accept or otherwise receive or agree to buy, accept or otherwise receive, any primary gold.

7. Section 16(1) of the Act provides that if anyone owns, or is in possession, custody or control of, any article or ornament or both at the commencement of the Act, such a person is required to give a declaration u/s 16(1) of the Act. Section 16(3) of the Act provides that if anyone is in possession of gold in excess of the quantity exempted u/s 16(5) of the Act, such a person is required to give a declaration of such gold. It is, therefore, clear that a declaration is required to be given in respect of the articles and ornaments u/s 16(1) of the Act, and a declaration is required to be given in respect of gold u/s 16(3) of the Act. Both Sections 16(1) and 16(3) are required to be read together with Section 16(5) of the Act. In other words, if anyone is in possession of ornaments, articles or gold in excess of the exempted quantity mentioned in Section 16(5) of the Act, he is required to give a declaration. This view is being supported by a Division Bench decision of the Gauhati High Court in Ganapatrai Dhanuka v. A.K. Bandopadhyay, Collector, Customs and Central Excise, Shillong and Anr. AIR 1973 Gau 8.

8. In the present case, learned Counsel for the petitioners claimed protection of the exemption granted u/s 16(5)(b)(ii) of the Act. Section 16(5) of the Act deals with the exemption of articles as well as in relation to any ornaments. Section 16(5)(a) deals with the articles which are required to be exempted under the Act. Section 16(5)(b) refers to the exemption to be granted in respect of ornaments. It is, therefore, clear that Section 16(5)(b)(ii) provides that a family is entitled to possess 4,000 grammes of ornaments. If it is in excess of 4,000 grammes, then the family is required to furnish a declaration. On a perusal of Section 16(5)(a) and (b), it is clear that no exemption has been granted in respect of primary gold.

9. I am, therefore, of opinion that the authorities have rightly held that no exemption can be granted so far as primary gold is concerned. Therefore, the authorities were right in confiscating the goods u/s 71 of the Act as well as in imposing a penalty of Rs. 2000 u/s 74 of the Act. In my opinion, the authorities have committed no illegality in this matter.

10. It is also contended that the prosecution has also been levied against these petitioners u/s 85 of the Act as well as u/s 136 of the Customs Act. The Act provides for confiscation of the goods as well as for imposition of the penalty. The Act also provides for the launching of prosecution againt the accused persons u/s 85 of the Act. Imposition of penalty and confiscation of goods are different from prosecution. A person is prosecuted before a criminal court. The orders of confiscation and penalty are passed by the authorities under the Act, and they have no nexus with the prosecution. Therefore, even if a prosecution

has been lodged against the petitioners, it cannot be said that it would be prejudicial against the petitioners. The criminal court can acquit an accused if an accused is not found guilty. The criminal court is not bound by the orders of the authorities under the Act. The authorities under the Act are different from the court. These authorities are not "court", but the prosecution will be laid in a court. Therefore, the question of prejudice does not arise.

11. In these circumstances, I uphold the orders as contained in Annexures-5, 6 and 7. Hence, this petition fails.

12. In the result, the petition is dismissed. The parties shall bear their own costs.