(1979) 04 OHC CK 0005

In the Orissa High Court

Case No : Original Jurisdiction Case No. 571 of 1977

Biramoni Sahu APPELLANT

Vs

Collector of Customs and Excise and Others RESPONDENT

Date of Decision : 11-04-1979

Acts Referred:

Customs Act, 1962 — Section 2, 57, 58, 63, 9

Citation : (1979) 48 CLT 101 : (1980) CriLJ 54 : (1979) 4 ELT 541

Hon'ble Judges : S. Acharya, J;J.K. Mohanty, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S. Acharya, J.—Certain goods and some cash were seized from the petitioner by the officers of opposite parties 1 and 2 on 26-9-1976. By Annexure 5 dated 30-6 1977, the petitioner was informed to take delivery of the goods seized from him, excluding the seized primary gold and the trunk from which gold was recovered on depositing Rs 4,379.96 paise towards the expenditure incurred for transportation, storage, security arrangement etc. for the said valuables.

2. The learned Counsel appearing for the parties state that the silver articles which had been seized have been handed over to the Income Tax Department, and the seized cash has been returned to the petitioner, but the seized primary gold is still with the Customs Department.

3. The petitioner by his writ petition has challenged only the portion of the order in Annexure 5 directing him to pay the above mentioned amount.

4. From the Counter filed by the opposite parties 1 and 2, it appears that these opposite parties kept the seized goods in the District treasury at Sambalpur for some time, but on the objection of the District Magistrate, Sambalpur, the seized goods were removed to the Divisional Office of the Customs Department at Sambalpur for safe custody. The above-mentioned amount of Rs. 4,379.96 has been demanded from the petitioner on account of expenditure incurred by the

Customs Department for storing the said goods at different places as stated above. It is quite evident from the Counter that the said goods were not kept in any '' Warehouse as defined under the Customs Act, 1962. ''Warehouse'' has been defined under Sub-section (43) of Section 2 of the Customs Act (hereinafter referred to as the Act) as follows :

"Warehouse" means public warehouse appointed u/s 57 or a private warehouse licensed u/s 58''.

"Warehoused goods" as defined under Sub-section (44) of Section 2 of the Act mean goods deposited in a ''Warehouse''.

There is nothing in the counter filed on behalf of the opposite parties 1 and 2 to show that the seized goods in this case were ever stored in any warehouse. Annexure A attached to the counter does not show any rent or expenses incurred by the Customs Department for storing the said article in a warehouse.

Section 9 of the Act provides that--

"The Board may, by notification in the Official Gazette, declare places to be warehousing stations at which alone public warehouses may be appointed and private warehouses may be licenced."

There is nothing on record to show that either the District Treasury at Sambalpur or the Sambalpur Divisional Office of the Customs Department in which the said articles and goods were kept, was ever appointed or licensed as a public or private warehouse under the provisions of Section 57 or 58 of the Act. The goods were seized from the petitioner''s premises. So it was for the department to make arrangements for the storage and proper upkeep of the said articles. As the goods were kept in the above-mentioned places and not in any warehouse, charges for storage and upkeep etc. on the same could not have been levied on the petitioner u/s 63 of the Act.

Mr. P.C. Misra, the learned Counsel appearing for opposit parties 1 and 2 could not show any legal provision under which the petitioner in the facts and circumstances of the case could be made legally liable to pay the said charges.

5. On hearing the Counsel appearing for the parties we are satisfied that the order in Annexure 5 directing the petitioner to deposit the aforesaid amount of Rs. 4,379. 96 P. was not legal. Accordingly, the order in Annexure 5 so far as it relates to the payment of the said amount is quashed.

The writ petition is accordingly allowed. In the circumstances of the case each party to bear his own costs.

J.K. Mohanty, J.

6. I agree.

