

(1959) 04 MAD CK 0010

In the Madras High Court

Case No : Writ Petition No's. 88, 109, 110 and 111 of 1959

Devichand Jestimall and Co., Bangalore and Others

APPELLANT

Vs

The Collector of Central Excise, Madras

RESPONDENT

Date of Decision : 22-04-1959

Acts Referred:

Evidence Act, 1872 — Section 114

Sea Customs Act, 1878 — Section 167

Citation : AIR 1960 Mad 281 : (1960) CriLJ 925 : (1960) 73 LW 13

Hon'ble Judges : Balakrishna Aiyar, J

Bench : Single Bench

Judgement

(1) On receipt of certain information the Superintendent of Central Excise, Vellore, searched the shop and residence of Messrs. Venechand and

sons on 9-11-1957. He seized from the shop 121-7/32 tolas of gold. This included 2 bars of 10 tolas each with foreign marks. The residence of

the proprietor of the firm was next searched and from there 5 bars of 10 tolas each with foreign marks were recovered. According to the accounts

maintained by Venechand and Sons the stock of gold on hand should have been only 98 tolas. A perusal of the private accounts maintained by this

firm showed that it had received gold from the four petitioners in these cases in the past and that the receipts of such gold were not accounted for

in the regular account books.

On 10-11-1957, Bijraj, son of Venechand Bhatwada who was managing the business stated that the several gold bars bearing foreign marks and

weighing 70 tolas which had been seized from the shop as well as from the residence were received from the petitioner in W. P. No. 110 of 1959.

He also made a statement relating to the transactions of the firm with the

petitioners in W. P. Nos. 109, 88 and 111 of 1959. He added that the gold was smuggled gold. On 30-11-1957, he gave a further statement in which he admitted that the smuggled gold have been purchased from the petitioner in these four writ petition.

(2) Govindraj, a clerk of Messrs. Venichand and Sons made statements on 18-11-1957 and 23-11-1957, in which he stated that he used to go to

Bangalore and purchase gold on behalf of the firm. He further stated that he had acquired 7 bars of gold from the petitioner in W. P. No. 110 of

1959 on 6-11-1957. Sampathraj the second son of Venichand gave a statement on 10-11-1957 in which he explained that his brother Bijraj was

in charge of bullion transactions and that the gold bars seized from the house would have been kept there by his father and that the clerk

Govindaraj was entrusted with the duty of purchasing gold. He added that some 4 days previously Govindaraj had been to Bangalore to purchase

gold. Venichand gave a statement on 14-11-1957 in which he admitted that the gold with foreign marks had been brought from Bowrilal of

Bangalore, the petitioner in W. P. No. 110 of 1959.

(3) The information obtained from these individuals was passed on to the Departmental officers in Bangalore and they recorded statements from

each of the four petitioners. All of them denied that they had any connection with Venechand and Sons. Three of them denied even the knowledge

of the existence of the firm of Venechand and sons at Vellore. They also denied that they had any telephonic contacts with that firm. The partner of

the firm Bowarilal (W. P. No. 110 of 1959), however admitted that he knew Venechand in connection with some matrimonial proposals.

(4) The Collector of Central Excise, Madras, gave a personal hearing to the counsel of the petitioners and finally recorded this view:

As regards the four Bangalore parties I consider that these four parties at Bangalore were the persons concerned in the smuggling of gold which

they had been passing on to the firm at Vellore." In this view he imposed a penalty of Rs. 6000 on the petitioners in W. P. No. 88 of 1959, of

Rupees 25000 on the petitioner in W. P. No. 109 of 1959, of Rs. 25000 on the petitioner in W. P. No. 110 of 1959 and of Rs. 12000 on the

petitioner in W. P. No. 111 of 1959. These individuals have, therefore, come to this court for the issue of an appropriate writ to quash the order of

the Collector imposing these penalties on them.

(5) Item I of the schedule to S. 167 of the Sea Customs Act so far as it is here material runs as follows:

If any goods, the importation or exportation of which is for the time being prohibited or restricted..... be imported into or exported from the

States contrary to such prohibition or restriction or

If any attempt be made as to import or export any such goods..... such goods shall be liable to confiscation; 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 one thousand rupees.

(6) We are not there concerned with the export of any gold but only with its import. To bring the petitioners within the terms of item 8 it is

necessary to establish either that they actually imported the gold or were concerned in the import of gold. That is to say, it must be shown that they

had arranged for the import of the gold or abetted the import of the gold or abetted the import of the gold or received it immediately after the

import, the receipt being the final step in the process of importation. In other words, they must have either actually committed the offence of

importation or have been accessories to it either before the fact or after the fact. The terms of item 8 so far as it relates to attempt to import need

not concern us here because even according to the department this is a case where the unlawful import of gold has been completed. To be in

possession of the gold, or to sell the gold, or to buy the gold, once the process of importation assuming the importation is unlawful--is completed

and independently of the series of acts connected with such importation will not fall within the terms of item 8 of the schedule.

(7) In this connection reference may be made to the decision of Rajagopal Aiyangar J. in W. P. No. 425 of 1956. That was a case where a person

was proceeded against departmentally for having purchased gold which it was believed, had been smuggled into the country. The Collector of

Customs dealt with him under Sec. 167, item No. 8. He then came to this court for the issue of an appropriate writ and the petition was allowed.

In dealing with the matter Rajagopala Aiyangar J. observed.

The ground upon which the officer held the petitioner guilty of an offence under the Sea Customs Act was that he had "aided or abetted" the

commission of the offence of illegal importation. It is not the case for the respondent that the petitioner induced, aided or abetted the Arabs to

effect the illegal importation of gold; he was not an "accessory before the fact" which is the meaning of the expression "abetted" used by the

collector of Excise in his order. The petitioner to doubt purchased the gold and on the finding of the officer, knowing that it was smuggled. But that

was long after the gold was smuggled and the petitioner was no party to the smuggling of the gold. It was therefore a misnomer or misapplication of

the words to term the act of the petitioner in purchasing the gold that he had "aided or abetted" the illegal importation.

(8) This decision was followed by a Bench of this court in W. P. No. 691 of 1957. Delivering the judgment of the Bench, Rajagopalan J.

observed:

The knowledge that what he was purchasing was smuggled gold, would not be evidence of participation in the act of smuggling itself, which is

what is constituted an offence under the first column of Sec. 167(8). To put it in other words, even if the act of purchase constituted the petitioner

an accessory after the fact, that would not suffice to hold that the petitioner was "concerned in the offence" specified in the first column of Sec.

167(8). Even if a person purchases gold with the full knowledge that that gold has been smuggled into the country, that by itself will not constitute

him a person concerned in the antecedent and completed act of smuggling. It was only on proof that the petitioner was concerned in one or the

other of the offence set out in the first column of S. 167(8) that the petitioner would have been liable to suffer the penalty prescribed in column 3 of

S. 167(8).

This view was re-affirmed in the judgment delivered a few days later in W. P. No. 247 of 1957.

(9) To show that the petitioners in these cases imported the gold in question or were concerned in its import, there is really no legal evidence

whatsoever. The Collector of Central Excise, Madras, relied upon these circumstances: (1) statements made by Birja, Sampathraj, Vanechand and

Govindaraj to the effect that the firm of Vanechand and Sons had purchased gold from these petitioners, (2) the circumstance that the firm of

Vanechand and Sons had been keeping separate accounts in respect of these and

other purchases, (3) the frequent trunk telephone communications between the firm of Venechand and the petitioners, (4) the inability of the petitioners to explain satisfactorily how they came into possession of the gold and finally (5) his conclusion that the statements which the petitioners gave are false. All these facts neither severally nor cumulatively show that the petitioners imported the gold or were concerned in its import.

(10) Learned counsel for the department explained that in 1957 smuggling of gold along the west Coast of South India was on such an extensive scale that the court would be justified in taking judicial notice of the fact. He then referred to illustration (a) to S. 114 of the Evidence Act and

contended that the court would be justified in presuming that the petitioners were concerned in the unlawful importation of the gold. But so far as I

can see there is no warrant for presuming that the gold we are dealing with was imported in India in 1957, or in fact at any particular time and,

therefore, there is no scope for the application of any such presumption on the analogy of illustration (a) to Sec. 114 of the Evidence Act.

It must also be borne in mind that mere possession of gold which has been unlawfully imported into India cannot be dealt with under item 8 of the

Schedule to Section 167. Learned counsel for the department next referred to the decision in Bhatnagars and Co. Ltd. Vs. The Union of India

(UOI), , and contended that before this court can interfere it must be satisfied that there is no evidence whatsoever on the basis of which the

Collector of Central Excise could have come to the conclusion he did. Now, as I have tried to explain there is no legal evidence whatever to

support the conclusion of the Collector of Central Excise that the petitioners either imported the gold or were concerned in its import.

The various circumstances referred to by the Collector of Central Excise might justify the belief that they knew that the gold had been imported into

the country unlawfully. It may also be that the petitioners were attempting to evade various other laws. All that will not suffice to bring them within

the scope of item 8 in the schedule to Sec. 167. That being so, these writ petitions must be and are allowed. The orders complained of are

quashed. There will be no order as to costs.