
(1983) 04 DEL CK 0020
In the Delhi High Court
Case No : C.W. 349 of 1970

Kamavaram Veeranna

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 08-04-1983

Acts Referred:

Citation : (1983) 5 DRJ 106(2)

Hon'ble Judges : M.L. Jain, J

Bench : Single Bench

Judgement

1. On 15-5-1967, the Inspector of Central Excise, Gulbarga checked the petitioner Veeranna a licensed goldsmith (since then dead) and recovered from his person four Kadagas of gold weighing 40 tolas worth Rs. 7,000/-. His books of accounts were also seized on 21-11-1967. Veeranna deposed that the said Kadagas were got manufactured eight to ten years back by his father and that they were kept as heirloom. But he needed money and brought the Kadagas from Raichur to Gulbarga for sale. Since he could not sell them at the price which the Serifs offered him, he was carrying them back home, when he was intercepted.

2. A notice was issued to him on 27-11-1967 stating that the petitioner had contravened the Rr. 126-G(1), 126-H(1), 126-H(2)(b) and 126-1(2)(g) of the defense of India Rules, 1962 and directed him to show cause why penalty under R. 126-1(16) of the said Rules be not imposed and why the said gold be not confiscated under R. 126-M

3. On 11-12-1967 deceased Veeranna replied that the Kadagas were prepared long before the Gold Control Rules were introduced and they were used as family ornaments and Therefore they could not find place in his account books. His family consisted of 11 members and the amount of gold recovered from him was within the permissible limits. The Collector of Central Excise, Bangalore, by his order dated 19-1-1968 rejected his plea because he should have given a declaration in January, 1963. Since such a declaration was not given, it cannot

now be claimed as a family property. he examined the Kadagas and found that they were nothing but a rod of primary gold bent crudely into the shape of a circle to appear like Kadagas. He, Therefore, directed confiscation and also imposed a penalty of Rs. 1,000/-. The Gold Control Administrator by order dated 29-11-1968 rejected his appeal. His revision application was rejected by the Government of India on 21-1-1970. These orders are challenged in the writ petition. The petitioner expired on 16-6-1982 and his legal representatives have been substituted in his place.

4. Since then, I have also called the articles for personal examination and found that they did not come within the definition of ornaments and are really primary gold bars converted into circular shape. The findings of fact, Therefore, arrived at by the learned Collector as upheld by the Administrator and the Central Government are correct.

5. The learned counsel for the petitioner submitted that all the three impugned orders are not speaking orders and, Therefore, deserve to be quashed. He relied upon *Jain Soap Mills, New Delhi v. Union of India* 1979 ELT 47, para 11. The learned counsel pointed out that they have not discussed why the articles were not considered traditional family ornaments worn according to the customs of the community. I do not think that it was necessary to deal with the contention specifically because the Kadagas cannot by stretch of imagination fall into the category of ornaments. Upon reading of the impugned orders. I am further unable to say that they are not speaking orders. They do contain reasons.

6. The second contention is regarding breach of natural justice as the examination of the gold by Serifs and goldsmiths whether it was primary gold took place behind his back. He complained that the gold was not examined in his presence. In the counter-affidavit it is stated that the Superintendent of Central Excise, Gulbarga called on 15-7-1967 two goldsmiths and two Serifs for examining the alleged gold ornaments under seizure. They opined that the Kadagas are manufacture by machine, that they were unused ones and that each weighed 10 tolas exactly. Nothing turns upon this aspect. Even if no opinion was obtained, it would not make any difference. It is not the case of the petitioners that the articles are not or gold. Both the contentions are, Therefore, rejected. The authorities below were right in holding that the deceased had contravened the Rules by not showing the seized gold in his books, or in the return and the declaration required to be given under the said Rules.

7. Lastly, the learned counsel contended that according to sub-rule (8)(a) of R. 126-M, an option should have been given to the petitioner to pay fine in lieu of confiscation of gold, but no option was given to him. The impugned orders do not say anything about it. The petitioner further says that he has been deprived of his fundamental right to hold property which was then available to him, and the authorities were required to give reasons why the option was not extended to him. In the counter-affidavit it is said that power was only discretionary and the option cannot be claimed as of right. It was also urged that this question was not

raised earlier at any stage. I have considered this aspect carefully and it appears to me that the option should be given to the petitioner. It has been withheld without any reason.

8. Having considered all the circumstances, I direct that the petitioner shall now be given an option in terms of R. 126-M(8)(a) by the Collector of Central Excise, Bangalore and then the matter be disposed of accordingly. The impugned orders shall stand modified to that extent. The writ petition is disposed of in the above terms. No costs.

9. Order accordingly.