
(1957) 09 MAD CK 0054
In the Madras High Court

M.S. Venkitanarayana Iyer and Others

APPELLANT

Vs

Collector of Central Excise

RESPONDENT

Date of Decision : 26-09-1957

Acts Referred:

Sea Customs Act, 1878 — Section 167(viii)

Citation : AIR 1958 Mad 306 : (1958) CriLJ 778 : (1958) 2 MLJ 115

Hon'ble Judges : Panchapakesa Ayyar, J;Ganapatia Pillai, J

Bench : Division Bench

Judgement

Panchapakesa Ayyar, J.—There are no merits at all in this appeal. It was alleged by Mr. R. M. Seshadri who appeared for the appellant who was charged with smuggling gold worth more than a lakh of rupees and was imposed a penalty besides the confiscation of the gold, that the judgment in Collector of Customs, Madras Vs. Lala Gopikissen Gokuldass, , by a Bench of this Court, consisting of Rajamannar C.J. and Rajagopala Ayyangar J. would show that there was total absence of jurisdiction, and so, a writ of certiorari as the one applied for would lie and that the appeal need not proceed by way of appeal.

We have looked into that ruling. We see nothing there in support of the contention in this appeal or that in such circumstances there will be total want of jurisdiction, in the Collector of Excise. Indeed, Rajagopala Ayyangar J. whose judgment in the writ petition is now sought to be appealed against, was himself the Judge who wrote the judgment quoted before, and it is extravagant to contend that he forgot his own principles when dismissing this writ petition as not at all sustainable. We hold that there was jurisdiction in the Collector of Excise to hear and determine the matter.

2. The second contention was that Bose J, of the Calcutta High Court, has held in Shew Pujan Rai Indrasan Rai Ltd. Vs. Collector of Customs and Others, , that the penalty to be imposed on a smuggler u/s 167 (viii) of the Sea Customs Act should be confined to Rs. 1,000, and should not exceed that amount, and that a Bench ruling of this Court, to which I too was a party, holding to the contrary is

no longer good law, and that it is also not permissible to combine Section 23 of the Foreign Exchange Regulation Act with the penalty allowed u/s 167 (viii). Even Bose J. did not go so far as to hold that both cannot be combined. He considered the possibility of the combination of both in some Cases, and, of course, held that each case had to be decided on its own facts. As regards the observation that the maximum, penalty cannot exceed Rs. 1,000 prescribed in S. 167,(viii) as an alternative to three times the value of the goods smuggled, in view of the later Act, the Foreign Exchange Regulation Act, prevailing over Section 167 (viii) of the Sea Customs Act, even though Section 167 (viii) has not been repealed or amended, we are not prepared to agree. We hold that the judgment of that single Judge of the Calcutta High Court cannot prevail over the judgment of a Bench of this Court. Of course, the appellant will be free to urge the point, if he thinks fit, in the regular appeal under the Sea Customs Act to be filed by him. We see no reason to admit this writ appeal. It is dismissed.