

(1961) 08 BOM CK 0003
In the Bombay High Court
Case No : Misc. Petition No. 9 of 1961

Nagraj Walchand Jain

APPELLANT

Vs

G. Koruthu, Collector of C. Ex.

RESPONDENT

Date of Decision : 14-08-1961

Acts Referred:

Constitution of India, 1950 — Article 226
Foreign Exchange Regulation Act, 1947 — Section 23A
Lands Customs Act, 1924 — Section 5(3)
Sea Customs Act, 1878 — Section 167(8)

Citation : (1961) 08 BOM CK 0003

Hon'ble Judges : K.K. Desai, J

Bench : Single Bench

Advocate : Joshi, for the Respondent

Judgement

1. This is a petition under Article 226 of the Constitution challenging the validity of an order, dated November 10, 1960, passed by the 1st Respondent-Collector of Central Excise and Land Customs, Bombay, whereby he ordered confiscation of the gold mentioned in the petition under the provisions of section 167(8) of the Sea Customs Act read with Section 5(3) of the Land Customs Act and Section 23A of the Foreign Exchange Regulation Act, 1947. He also imposed a personal penalty of Rs. 1,000 each on the firm of Messrs Gulabchand Chatranji & Sons and the 1st Petitioner.

2. One of the grounds on which the order is challenged is that inspite of repeated requests made in that behalf 4 department witnesses, viz. Laxman Devkar, B. K. Kadam, Ebrahim Hosseinbhoy Bohri and Ramchandra Devkar and 2 other witnesses, viz. Kishan Shanker Pardeshi and Mahadev Baburao Kakade, whose statements were recorded exparte and were relied upon by the 1st Respondent, were not produced for cross-examination and requests for their cross-examination were disallowed. In connection with this ground, the 1st Respondent by his affidavit in reply contended that it was not practice in the customs inquiries to allow examination and cross-examination of witnesses. No person

was examined as a witness. Statements of different persons were recorded and copies of such statements were furnished to the persons affected. The department in this inquiry was not bound by the provisions of the Evidence Act. The substance of the contention is that it was discretionary for the Enquiry Officer to allow cross-examination or not. His decision in that connection was final. In this connection, in paragraph 9(xi) of the impugned order the 1st Respondent stated as follows :

"The counsel for both the parties had several times requested for permission to cross-examine these 4 persons and that the department should produce them for cross-examination. My predecessor had refused permission. The same application was made to me again. I have very carefully considered the request. It is not true that the department is relying mainly on statements of Ramchandra, Laxman, Dinkar and Ibrahim, though it is correct to say that some reliance is being placed on these statements, but this is done only when the statements are taken with the other evidence in this case. Copies of all statements including the statements of these 4 persons have been supplied to the parties and their comments and evidence in respect of these statements are on record and are fully considered. If I had any reason to suspect that statements of any of these witnesses were in any way biased or prejudiced or they were supported by other evidence I would have permitted their cross-examination, or rejected their evidence. But in this case I see no reason to suspect that these witnesses were biased or prejudiced, and I see no reason to grant the request for cross-examination, xx xx"

3. Having regard to the above statements, it is apparent that in arriving at the impugned decision and order, the 1st Respondent has relied upon the statements made by the witnesses Laxman Devkar, B. K. Kadam, Ebrahim Hooseinbhoi Bohri and Ramchandra Devkar. In the impugned order the 1st Respondent has failed to refer to Kishan Shankar Pardeshi and Mahadev Baburao Kakade.

4. It has now been held by a Division Bench of this Court in special Civil Application No. 947 of 1960, decided on 2nd August 1961 that the contention that in customs inquiries there is no right of cross-examination is not justified. The Division Bench has on the contrary held that failure to afford opportunity to cross-examination must result into violation of principles of natural justice and that the affected party is entitled to right of cross-examination in quasi judicial inquiries held by the customs officers under the Sea Customs Act.

5. Mr. Joshi for the respondents has informed me that having regard to the decision of the Division Bench and the facts as appearing above, he is not in a position to contend before me that the petitioners' contention as recited above is unjustified. On the contrary, following the decision of the Division Bench, I would have to come to the conclusion that in refusing to afford opportunity to cross-examine the 6 witnesses mentioned above, the 1st respondent has violated principles of natural justice. The result, therefore, is that the impugned order must be set aside.

6. I have not considered other grounds mentioned in the petition, as on the above short facts the petitioners are entitled to succeed.

7. In the result, the impugned order is set aside. The rule is made absolute in terms of prayer (a).

8. The 1st respondent is entitled to make fresh inquiries. In the event of the 1st respondent or appropriate Officer taking fresh proceedings within 4 weeks from today against the petitioners in respect of the gold mentioned in the petition, there will be no writ of mandamus. In default of fresh proceedings within 4 weeks the writ of mandamus will issue directing the respondents to restore possession of the said two slabs of gold weighing 608 tolas and 1/2 anna to the petitioners.

9. The respondents will bear and pay costs of the petitioners.