
(1986) 01 CAL CK 0020
In the Calcutta High Court
Case No : Civil Order No. 13111 (W) of 1984

Sambhunath Karmakar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-01-1986

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : 91 CWN 737

Hon'ble Judges : Ajit Kumar Sengupta, J

Bench : Single Bench

Advocate : R.N. Bajoria, Rupen Mitra and P.C. Ghosh, for the Appellant; S.N. Banerjee, for the Respondent

Judgement

Ajit Kumar Sengupta, J.—The petitioner carries on business as jeweller at Alamganj, Ghatal in the district of Midnapore. On 26th April, 1963 Central Excise Officers conducted a raid at the shop of the petitioner and seized primary gold weighing 252.960 gms. new ornaments of gold having purity of more than 14 carat weighing 38.636 gms. After the seizure of the said gold the Superintendent of Central Excise (Gold Control) served a notice upon the petitioner to show cause why the said gold seized under Rules 126-C, 126-F, 126-G and 126-H of the Defence of India (Amendment) Rules 1963 should not be confiscated. The petitioner submitted his explanation. By an order dated 10th January, 1964 Collector of Central Excise Calcutta and Orissa held the petitioner guilty of violation of the Rules 126-C, 126-F, 126-G and 126-H of the said Rules and directed as follows:

the primary gold (252.960 gms) new ornaments of gold (1744.-472 gms) and old ornaments of gold (38.636 gms) all of purity exceeding 14 carat shall be confiscated under Rule 126-M of the Defence of India Rules, 1962 for contravention of Rules 126-C, 126-F, 126-G and 126-H of the said Rules.

A criminal case was also initiated against the petitioner for being in possession of primary gold and not keeping accounts as required under the Notification of the

Government of India. The petitioner was also charged with acquiring or accepting primary gold in contravention of the provisions of the relevant Rules. The petitioner pleaded not guilty to the charges but he was convicted. On appeal the petitioner was acquitted in respect of the charge as regards acquisition and acceptance of the primary gold. Thereafter the petitioner moved this court in revision and the petitioner was acquitted in respect of the other charge of having in possession of the primary gold. After acquittal of the petitioner for contravention of the Defence of India (Amendment) Rules, 1963, the petitioner applied for releases of the said gold and for reconsideration of the decision made on 10th January, 1964.

2. The said application was rejected by the Superintendent of Central Excise (Gold Control) by his order dated 7th May, 1966. The reasons given for rejection of the said application for release of the gold ornament and reconsideration of the order dated 10th January, 1964 is as follows :

The Defence of the India Rules do not provide for re decision or modification of adjudication order (original) in question by the Collector of Central Excise, Calcutta and Orissa. Under the above circumstances your application cannot be entertain.

3. The petitioner thereafter moved this court under Article 226 of the Constitution of India. Upon the said application Rule was issued and interim order was passed in terms of prayer (c) of the writ application. In other words, the respondents were restrained from dealing with the gold seized and from disposing of the same pending the hearing of the Rule. While the said writ application was being heard it was submitted on behalf of the respondents that the said seized gold was deposited with the Government Mint on 19th May, 1966 and thereafter it was melted. Accordingly the petitioner asked for adding Government Mint in view of the contention that gold was melted by the Mint. The said application was opposed. Leave was given to the petitioner to move a fresh application adding the Government Mint as a party and the said Rule being C.R. 1259(W) of 1966 was withdrawn.

4. Thereafter the petitioner moved a fresh writ application being C.R. No. 2022(W) of 1973. The said writ application was disposed of by the order dated 11th August, 1977 passed by Amiya Kumar Mookerji, J. who directed the petitioner to file a fresh representation within two weeks from that date and the Collector of Customs and Central Excise, Calcutta and as such was directed to dispose of such Representation within a month thereafter, after giving the petitioner an opportunity of being heard. Pursuant to the said order the petitioner filed a fresh representation before the said Collector and the hearing was also given to the petitioner. The last order which was passed in this case by the Collector is dated 20th February, 1978, asking the department to put up a note on 25th February, 1978. It appears that no action was taken thereafter and no order was passed pursuant to the ejection of this court.

5. On 25th September, 1984 the present writ application has been filed by the petitioner for appropriate direction upon the respondents for disposal of the representation of the petitioner. At the hearing on 28th February, 1985 it was submitted by the learned Advocate appearing for the respondents that the file was misplaced and accordingly no order could be passed by the appropriate authority in compliance with the order dated 11th August, 1977. I, therefore directed the Competent Authority by my order dated 28th February, 1985 to dispose of the said representation of the petitioner in terms of the order dated 11th August, 1977 of *Amiya Kumar Mookerji, J.* within five weeks from the date of communication of the said order pursuant thereto an order has been passed by the Collector of Central Excise, Calcutta. Leave was given to the petitioner to challenge the said order by a supplementary affidavit if the petitioner was aggrieved. In a supplementary affidavit affirmed on 8th October, 1985 the petitioner has annexed a copy of the said order. The operative part of the said order dated 6th May, 1985 is to the following effect :

The only contention raised by the petitioner in the supplementary affidavit is that the Collector is bound to return the seized gold or make payment of the current market value thereof, as the petitioner is entitled to get back the gold wrongfully seized. An affidavit has also been filed by the respondents dealing with the grounds urged in the supplementary affidavit of the petitioner. The contention of the respondents is that the said order of the Collector of Central Excise, Calcutta-11 is an appellable order and this court should not interfere. It is also stated that the value of the gold if at all cannot be else than the value at that date of seizure as appearing in the Panchanama (seizure list) wherein the value has been stated to be Rs. 16,642.50. It is also contended since no appeal was preferred by the writ petitioner against the adjudication order dated 10th January, 1964, the Excise Authority has no power to retain the gold in their fold and had to deposit the same in the Government of India Mint which was in usual course melted as far back as on 24th June, 1966. Having regard to the circumstances of this case, the petitioner's claim for refund of the gold being incapable of implementation, the petitioner can at best claim the value of the gold at the date of the seizure. It is also contended that the value as defined in Gold (Control) Act, 1968 and as appearing in Section 2(v) of the said Act, is the value at the date of the seizure. Accordingly the writ petitioner is not entitled to the market value of the gold.

6. I have considered the rival contentions. It is true that the petitioner did not prefer any appeal against the order dated 10th January, 1964 whereby the seized gold was confiscated. At that time, criminal proceedings were pending on the self same charges for contravention of the relevant Rules for which order of confiscation was passed. The petitioner was also convicted and on appeal, one of the charges was upheld by the appellate court. But ultimately the petitioner was acquitted by this court in Criminal Revision No. 20th January, 1966. Thus the basis of order passed on 10th January, 1964 confiscating the seized gold was gone. The respondents initiated both the departmental proceeding and the

criminal proceeding for alleged contravention of the relevant rules. Charges were identical. The departmental proceedings were concluded earlier and order for confiscation was passed on 10th January, 1964. Had the Department not initiated a criminal proceeding, then the contention of the respondents would have some substance that the petitioner by allowing the order dated 10th January, 1964 to become final cannot now contend that he is entitled to return of the gold. But the Department also proceeded to initiate a criminal proceeding and where on evidence the petitioner was ultimately acquitted of the charges, the Department could not proceed on the basis of the finding given in the departmental proceeding. Otherwise the departmental officer would continue to hold the petitioner guilty of the charges of which the competent criminal court exonerated the petitioner. Accordingly the petitioner acquired right to claim the return of the seized gold on 20th February, 1966 when this court acquitted the petitioner of the charges brought against him. The petitioner immediately thereafter moved this court under Article 226 of the Constitution. This fact would demonstrate that there was no delay on the part of the petitioner in challenging the order of confiscation made on 10th January, 1964. The seized gold was deposited with the Mint. Whether such gold was to be melted or not in the usual course is not the relevant consideration. Why and under what circumstances the seized gold had been melted immediately after the confiscation order was passed have not been disclosed. No separate affidavit has been filed on behalf of the Government Mint. When the criminal proceedings were pending the respondents should not have melted the gold. However the melting of the gold by the Government cannot take away the right of a citizen to get back his property illegally seized. Even though the gold is melted. It remains deposited in another form. By reason of the judgment and the orders of the Criminal Court the petitioner was acquitted of the charged brought against him. If the petitioner is not guilty of the charges of the contravention of the relevant rules, as was held by the Criminal Courts, in that event no order of confiscation can be passed in respect of the seized gold. The Collector in his order also held that the order of confiscation passed on 10th January, 1964 is not sustainable. In other words the collector also found the petitioner not guilty of the charges of contravention of the relevant rules. Accordingly the Collector in his order dated 6th May, 1985 held that the order of confiscation dated 10th January, 1964 is not sustainable. Where the order is invalid, the goods confiscated under the invalid order cannot be retained by the respondents. The petitioner has to be restored to substantially the same position as he was in before the order dated 10th January confiscating the seized gold was passed. The confiscation in this case has been held to be invalid.

7. The question is whether the respondents are bound to return the gold or the price thereof. The contention of the respondents that the gold cannot be returned because it has been melted cannot be accepted. In the seizure list the purity of the gold has been mentioned. The Government can return equivalent quantity of gold to the petitioner of the same or similar purity. Even if the gold has been melted and even if the petitioner cannot get the return in specie the petitioner is

certainly entitled to get the equivalent quantity of gold of the same or similar purity. It is nobody's case that the Government does not hold or possess the gold melted. It is not a case where confiscated goods have been sold to a third party and third party right has intervened. Since the Government holds the melted gold in some form or the other, the Government is bound to return such gold.

8. Alternatively, if the gold is not returned the petitioner can get the value of the gold. The question is whether the value as shown in the seizure list should be given to the petitioner or the petitioner would be entitled to the market price thereof. The seizure list refers to the value of the gold and the market price thereof as on the date of the seizure. After 20 years the proceedings have come to a finality. The respondents have not preferred an appeal against the said order of the Collector dated 6th May, 1985. If the petitioner has not contravened any of the provisions of the Gold Control Act as held by the Collector, the gold is not liable to confiscation at all. The petitioner may not have filed an appeal against the adjudication order dated 10th January 1964 but he has challenged the said order in writ proceeding after he was acquitted of the charges in the criminal proceedings. It is not the fault of the petitioner that the matter has been dragged on so many years for taking a decision even after the order was passed by Amiya Kumar Mookerji, J. in 1977. For the last 8 years, the respondents did not take any steps to dispose of the matter on the ground that the file was misplaced.

Therefore from the date of passing of the order by Amiya Kumar Mookerji, J. and till the order was passed by the Collector on 6th May, 1985, no delay can be attributed to the petitioner. The petitioner has been deprived of the use and enjoyment of the gold. If there was no contravention then the order of confiscation is wholly without jurisdiction and if it is without jurisdiction then the petitioner is entitled to get all benefits which he would have otherwise enjoyed.

There is no dispute as to the concept of market value but the question is whether the market value is on the date of seizure or the date of final order of adjudication when the order of confiscation is set aside.

9. Section 2(v) of the Gold (Control) Act has to be construed in the context in which the word "value" occurs in different sections of the Act. Mainly the concept of value is in section 73 where the adjudicating authority has the discretion to give an option to pay fine in lieu of confiscation such fine which would not exceed the value of the thing. in respect of which confiscation is authorised. There the value has been taken to be the value at the date of the seizure. Similarly where the question of imposition of penalty u/s 74 arises the penalty would not exceed five times of the value of the gold. There also the value is understood to be the value on the date of the seizure. The act does not provide specifically how should a person from whose custody the gold was seized was to be compensated if the seized gold could not be returned to him. It is neither equitable nor fair to ask the petitioner to receive only the value of the gold seized on the date of the seizure and no more. If the goods cannot be returned the respondents are bound

to pay the market price. Such market price cannot be the market price on the date of the seizure. It must be the price on the date when the adjudication order is set aside. On that day the petitioner has got the right of either return of, the gold seized or the value thereof. It is because there has been appreciation of the value due to lapse of 24 years cannot be a ground for refusing to pay such value to the petitioner who was seriously affected by the order of confiscation. Otherwise, the petitioner could not be restored to substantially the same position as he was in at the date of seizure, even one-tenth of the quantity of gold seized would not be available to him. He must get, at least the substantial quantity of gold with the money to be offered to him. Having regard to the facts and circumstances of this case, I dispose of this application by directing the respondents either to return the equivalent quantity of gold seized of same or similar purity or to pay the market price of such gold as on the date of the order of; the Collector of Central Excise i.e. 6th May, 1985. This order shall be carried out within four weeks from the date of communication.