

(1985) 07 BOM CK 0010

In the Bombay High Court

Case No : Appeal No. 170 of 1979 in Miscellaneous Petition No. 241 of 1972

S.C. Roy and others

APPELLANT

Vs

Kantilal Nanchand and Co. and others

RESPONDENT

Date of Decision : 22-07-1985

Acts Referred:

Customs Act, 1962 — Section 11, 11, 11H

Citation : (1989) 41 ELT 191

Hon'ble Judges : Sujata V. Manohar, J; M.H. Kania, J

Bench : Full Bench

Judgement

Smt. Sujata V. Manohar, J.—The Appellants are the original respondents (hereinafter referred to as the respondents). The original petitioners 1 and 3 are the respondents herein. (They will be referred to hereinafter as the petitioners).

2. The petitioners at all material times carried on business, inter alia, as Jewellers at Mumbadevi Road, Bombay-3. On 24th May 1969 petitioner No. 1 firm purchased silver articles weighing more than 700 kgs. in the normal course of their business. The transactions were entered in the "Roj-Mel" as also in the purchase book. On the same day Petitioner No. 1 firm sold some of these silver articles to one Messrs Sun Shine Traders. The firm however, decided to send the remaining silver articles to one Manubhai Chhaganlal Dosalbhai at Ahmedabad. For this purpose the petitioners sent 24 boxes containing these silver articles to the firm of M/s. Kantilal Somabhai Angadia who were running a carrier service between Bombay and Ahmedabad. The total net weight of silver contained in these 24 boxes came to over 700 Kgs. and its value came to Rs. 3,70,000/-. The petitioners however, declared these boxes as containing machinery. The boxes were seized from the carries on 26th of May 1969 by the Central Excise and Customs Officers, Marine and Preventive Division, Bombay under a panchanama, before they could be despatched to Ahmedabad.

3. Thereafter, the petitioners were served with a show cause being in May 1970 calling upon them to show cause why "silver bullion in various forms such as

statues, "thalis" and "kadas" etc. should not be confiscated u/s 113(1) of the Customs Act and why penalty should not be imposed u/s 114 of the said Act. The petitioners were given a hearing by the Additional Collector, Central Excise and Customs. Thereafter, the second respondents passed an order confiscating some of the said silver articles as specified in his order of 28th January, 1972. For some of the other articles he gave an option to pay a fine of Rs. 5,000/-. He also imposed a personal penalty of Rs. 50,000/- each on petitioners Nos. 2 and 3. Thereafter, the petitioners filed this petition on 5th April, 1972 challenged the said order, Madon J. as he then was, by his judgment and order dated 11/12 September, 1978, allowed the petition and made the rule absolute in terms of prayers (a) and (b). The present appeal has been preferred by the original respondents from the judgment and order of 11/12 September, 1978.

4. Silver articles which are the subject matter of dispute have been described in Appendix A to the panchanama dated 26th May 1969. They consist of silver plates, "Kadas" (bracelets), silver statues of assorted "heavy" creatures such as elephants and rhinoceros, statues of a female figure and busts of Tagore. There is also a certain quantity of scrap silver in crude shapes. Now, under, Chapter-IV B of the Customs Act, 1962 certain provisions have been made, inter alia, for prevention or detection of illegal export of goods. This Chapter relates to "specified goods." u/s 11-H(e) of that Chapter "specified goods" are defined to mean "goods of any description specified in the notification issued u/s 11-I in relation to a specified area". Under a Notification No. 7-Cus., dated 3rd January, 1969 issued under the provisions of Section 11-I of the Customs Act, 1962 the Central Government has notified "silver bullion and coins" as "specified goods" under Chapter IV-B.

5. u/s 11-J, every person who owns, possesses or controls on the specified date, or acquires with in the specified area after the specified date, any specified goods the market price of which exceeds Rs. 15,000/-, is bound to send to the proper officer an intimation as prescribed therein. It is not necessary to examine these provisions in detail. Broadly speaking, under this section any person who intends to shift any "specified goods" is required to deliver to the proper officer an intimation as prescribed in that section. Similarly, there are other obligations relating to obtaining a transport voucher, maintaining a true and correct account and so on. u/s 11-K transportation of "specified goods" requires a transport voucher. Under sub-section (2) Central Government can issue a notification requiring transport vouchers relating to transport of certain types of specified goods to be countersigned. Under Notification No. 9-Cus., dated January 3, 1969 u/s 11-K(2) of the Customs Act, 1962 the Central Government has specified "Silver Bullion and coins" as goods for the purpose of clause (1) of that sub-section and directed that no such goods, the aggregate market price of which exceeds Rs. 1,000/- shall be transported from, in to or within any area specified u/s 11-H unless the transport voucher under sub-section (1) of the Section 11-K has been countersigned by the proper officer. A violation of the provisions of this Chapter can result in confiscation of goods u/s 113 of the Customs Act. u/s 114

there is a penalty for attempt to export goods improperly. u/s 111 there is a provision for confiscation of goods used for concealing smuggled goods.

7. The provisions of these sections are sought to be applied in respect of silver articles of the petitioners on the ground that these articles are "silver bullion" and are, therefore, "specified goods" under the notification of 3rd January, 1969. It is the contention of the respondents that these articles are silver bullion in the shape of statutes, plates, "kadas" and so on.

8. The term "silver bullion" is not defined either in the Notification or in the Customs Act. In the absence of any definition silver bullion will have to be understood in its ordinary or commercial sense. The term "silver bullion" has been defined in the Concise Oxford Dictionary as "Gold or silver before coining or manufacture". Webster's Third New International Dictionary defines "bullion" as "uncoiled gold or silver in the shape of bars, ingots, or comparable masses". It is not necessary for us to examine in detail the various definition of the term bullion given in the various dictionaries because they have been examined in detail by the learned trial Judge with whose conclusion we are in respectful agreement. The various dictionary meanings show that "bullion" refers to gold or silver in the shapes of bars, ingots or other comparable masses. It does not refer to articles made out of silver or gold.

9. In this contention a reference may be made to a decision of the Supreme Court in the case of Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. G.S. Pai and Co., . In that case the Supreme Court was required to construe an entry in the Kerala General Sales Tax Act which referred to "Bullion and specie". The Supreme Court held that ornaments and other articles of gold cannot be regarded as "bullion". Even if old and antiquated, they are not raw or unwrought gold or gold in the mass, but they represent manufactured or finished products of gold. Nor do they come within the meaning of the expression "specie". According to common parlance, the word "Specie" means any metallic coin which is used as currency. Ornaments and other articles of gold cannot be described as "specie". In that case the term "bullion" was not defined under the Kerala General Sales Tax Act. The Supreme Court interpreted the term by applying the principle that entries in Sales Tax legislation must be construed as understood in common parlance, by people conversant with this commodity.

10. In the case of H.R. Syiem Vs. P.S. Lulla, this court was required to construe an entry under the Import Trade Control Schedule. The question was whether black insulting tapes fell within the meaning of expression "adhesive tape". On a difference of opinion between two learned Judges of the Court the case was decided by the then Chief Justice of the Bombay High Court. He also applied the same principle while deciding the black insulated tapes cannot be considered as adhesive tapes.

11. In the present case the term "silver bullion" occurs in a notification issued u/

s 11-I of the Customs Act. u/s 11-I the Central Government has the power to prohibit import or export of certain goods which may be specified. In the context of the Customs Act, therefore, the goods which are described in such a notification will also have to be understood in the manner in which such goods would be understood by people engaged in trade of that commodity. Silver bullion will, therefore, have to be understood as it is generally understood by people dealing in that commodity.

12. The petitioners have adduced the evidence of three witnesses who are all trading in silver. Each of these three witnesses has said that the silver articles in question cannot be regarded as "bullion". The respondents have not led any evidence to show that these silver articles are generally regarded as "bullion" in the silver trade. Nor have they cross-examined the witnesses of the petitioners. The respondents have merely relied upon a second panchanama which was purported to be held on 1st of May, 1970.

13. Under with panchanama the panch witnesses have given an opinion that the articles were excessive in weight and were crude in shape. The articles were also unpolished and they could not be used in their present form. In the first place, it is not clear why the second panchanama was made when a panchanama was already made on 26th May, 1969 when the articles in question were seized. Secondly the qualification of the panch witness are also not clear. There is nothing on record to show that these panchas were carrying on business in silver trade or were in any way familiar with trading in silver. The petitioners were not given any notice of the second panchanama nor were they given an opportunity at any stage to cross-examine the panchas. In these circumstances the learned trial Judge has rightly not relied upon the second panchanama.

14. Had it been the intention of the legislature to include within the term "silver bullion" silver articles which were merely given the shape of an article for the sake of taking them out of the description of silver bullion, then this could have been specifically provided for in the notification. In any event we have no satisfactory material before us which would show that the silver articles in question were of this type. Some of the silver articles were produced before us and they did not appear to be articles of this nature though it would not be correct for us to interpose our own views in the matter. On the basis of the evidence which has been led by the petitioners before the Customs Authorities the petitioners have established that these articles in question cannot be regarded as "silver bullion".

15. The respondents rely upon the statement of Objects and Reasons which accompanies the bill which was finally enacted as the Amending Act of 12 of 1969. As a result, Chapters, IVA, IVB and IVC were added to the Customs Act of 1962. Relying upon the Statement of Objects and Reasons, the 1st respondent has observed in his order that the Amending Act 12 of 1969 was necessitated because of large-scale smuggling of silver out of the country. The object of incorporating Chapter IVB in the Customs Act was to prevent such smuggling and

to facilitate detection and confiscation of goods sought to be smuggled out of the country. Hence, "silver bullion" should be widely interpreted to include silver articles also. It is difficult to accept such an interpretation. The meaning of a term in a legislation has to be interpreted in the context of the legislation. But an expression is not defined in a statute cannot be given an artificial meaning of the basis of Statement of Objects and Reasons. The Statement of Objects and Reasons can certainly be looked at in order to determine the background and antecedent state of affairs which led to the legislation in question. But it cannot be restored to in order to determine the true and correct meaning of words used in the statute. Much less can it be used to give an artificial meaning which the term does not ordinarily possess.

16. We are in respectful agreement with the detailed reasoning and conclusion arrived at by the learned trial Judge. In the premises the appeal is dismissed with costs.

17. Mr. Lokur applies for leave to appeal to the Supreme Court. We do not find any substantial question of law of public importance which requires to be referred to the Supreme Court.

18. Application rejected.