

(2004) 03 DEL CK 0067
In the Delhi High Court
Case No : C.W.P. No. 330 of 1981

Shri Sampat Lal and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-03-2004

Acts Referred:

Citation : (2004) 73 DRJ 613 : (2004) 94 ECC 82 : (2004) 176 ELT 60

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Narottam Vyas, for the Appellant; Saroj Bidawat, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The petitioners were traveling by bus from Delhi to Sirsa and near Bahadur Sales Tax Barrier, Police CID staff apprehended the petitioners. On search a plastic bag held by petitioner No.1 was found to contain primary gold weighing 1107 grammes valued at Rs.57,000/-. The petitioners were arrested for being in possession of gold as stolen property but were subsequently bailed out. The case was ultimately withdrawn on 12.03.1975 but the police authorities informed the Department of Central Excise about the recovery of primary gold and for necessary action under the Gold (Control) Act, 1968 (for short the said Act).

2. The Collector of Central Excise, Chandigarh, passed an order dated 03.09.1976 confiscating the gold and imposing a penalty of Rs.2 lakhs on the petitioners u/s 74 of the said Act. The stand of the petitioners before the said authority was that certain ornaments belonging to different persons were handed over to them and the gold was melted out of the ornaments and was being taken to Delhi for die-cutting of the melted gold. The petitioners claimed that they forgot to accompany the register of certified goldsmith from Jodhpur and thus could not get die-cutting work done in Delhi. The authority noted that there is no dispute about the recovery of primary gold or the absence of the certificate of

goldsmith even assuming petitioner No.2 is a certified goldsmith. This was so since even a certified goldsmith could not possess more than 300 grammes of primary gold.

3. The authority found that the statements made and story set up was audacious. Despite the elaborate planning it could not be conceived that the gold in question would be taken to Delhi without appropriate certificate and then be brought back. In between two persons also went away to Hardware. It is also noticed that there is no absence of die-cutting work at Jodhpur. Neither were the names of die-cutters in Delhi given nor the shops visited.

4. The petitioners aggrieved by the said order preferred an appeal before the Collector, Central Excise, which was dismissed on 28.07.1979. The petitioners thereafter filed a Revision before the Central Government which was also dismissed vide impugned order dated 18.09.1980. The order of the first appellate authority has not been filed by the petitioners. In the impugned order dated 18.09.1980, it was noticed that there was no reason as to why the old jewellery had to be converted first into the primary gold for being taken to Delhi in case the die-casting had to be done in Delhi and the only answer given by the petitioners before the said authorities was that they found safer to carry old jewellery in the form of primary gold.

5. Learned counsel for the petitioners has made a four-fold submission attacking the impugned order on the said grounds.

6. The first plea raised is that the petitioners were never given the option of paying fine equal to the value of the goods as envisaged u/s 73 of the Act which is as under :

"73 Power to give option to pay fine in lieu of confiscation :-

Whenever any confiscation is authorized by this act, the officer adjudging it may, subject to such conditions as may be specified in the order adjudging the confiscation, give to the owner thereof an option to pay in lieu of confiscation such fine, not exceeding the value of the thing in respect of which confiscation is authorized, as the said officer thinks fit."

7. A reading of the aforesaid Section shows that this is a discretion vested with the aforesaid authority and it is not mandatory to give this option to the petitioners. In my considered view this cannot be said to be an infirmity which can nullify the impugned orders.

8. The second contention raised by the learned counsel for the petitioners is that the authorities did not apply their mind to the issue that the petitioners were entitled to carry at least 300 grammes of primary gold u/s 42 of the said Act. Section 42 is as under :

"42 Limit on primary gold which a certified goldsmith may possess :

No certified goldsmith shall either own or have at any time in his possession,

custody or control any quantity of, -

(i) standard gold bars in excess of one hundred grammes, or

(ii) any quantity of primary gold (including standard gold bars) in excess of three hundred grammes."

9. A bare reading of Section 42 shows that it is only a certified goldsmith who could have possession of primary gold and even assuming the said benefit was extended to petitioner No.2, as held in the impugned orders, the amount of confiscated gold was far in excess of the same.

10. I am unable to accept the contention of learned counsel for the petitioners that the aforesaid provision would imply that even if the gold is beyond 300 grammes, at least 300 grammes has to be released and only the balance has to be confiscated. 300 grammes is the cut-off limit for the quantum of primary gold to be held by a certified goldsmith and once that limit is exceeded, the complete gold is liable to be confiscated.

11. The third plea raised by learned counsel for the petitioners is that in view of the allegation of the petitioners that gold was made out of jewellery items which have been melted and were owned by third parties, the said parties should have been provided an opportunity of hearing and not to confiscate the gold. In this behalf reliance has been placed on the proviso to Section 72 (2). Section 72 (2) with the proviso is as under :

"72. Confiscation of conveyances :- Any conveyance or animal which has been, or is being, or is attempted to be, used for the transport of gold in relation to which any provision of this Act or any rule or order made there under has been, or is being, or is attempted to be, contravened, shall be liable to confiscation unless the owner of the conveyance or animal proves that it was so used or about to be used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal and that each of them had taken all reasonable precautions against such use :

Provided that where any such conveyance or animal is used for the transport of goods or passengers for hire, the owner of the conveyance or animal shall, notwithstanding the provisions contained in Section 73, be given an option to pay in lieu of confiscation of the conveyance or animal, a fine not exceeding the value of the gold in relation to which the provision of this Act or any rule or order made there under has been, or is being, or is about to be contravened."

12. The object of the aforesaid sub-proviso, in my considered view, is that third parties whose gold is in possession of a person from whom it is recovered should not be adversely affected. However, the pre-condition for the application of the proviso is that the same should have occurred without the knowledge or connivance of the persons to whom it belongs. In the present case, it is admitted that the goods were given as jewellery but were being melted into primary gold. Thus the persons who owned the jewellery were conscious of the purpose to

which it was going to be and no grievance even was made by such third parties and petitioners cannot take advantage of the said proviso to escape the order of confiscation.

13. The last contention raised by learned counsel for the petitioners arises from the plea that the show cause notice issued by the respondent authorities was not within the time stipulated under the proviso of Section 79 which is as under :

"79. Giving of an opportunity to the owner of gold etc. - No order of adjudication of confiscation of penalty shall be made unless the owner of the gold, conveyance, or animal or other person concerned is given a notice in writing :-

(i) informing him of the grounds on which it is proposed to confiscate such gold, conveyance or animal or to impose a penalty ; and

(ii) giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the confiscation or imposition of penalty mentioned therein and if he so desires, of being heard in the matter :

Provided that the notice and the representation referred to in this section may, at the request of the owner or other person concerned, be oral:

Provided further that where no such notice is given within a period of six months from the date of the seizure of the gold, conveyance or animal or such further period as the Collector of Central Excise or of the Customs may allow, such gold, conveyance or animal shall be returned after the expiry of that period to the person from whose possession it was seized.

Explanation : - Where any fresh adjudication is ordered under this Act, the period of six months specified in the second proviso shall be computed from the date on which such order for fresh adjudication is made."

14. In terms of the aforesaid proviso, it is mandated that notice should be given within a period of six months from the date of seizure of the gold or such further period as the Collector of Central Excise may allow. It is not disputed that no time extension was granted and thus only issue to be considered is whether the notice was within the stipulated period of six months.

15. Learned counsel for the petitioners states that the seizure by the police took place on 31.05.1974 and the show cause notice was issued on 02.01.1976. It is thus submitted that same was beyond the period of six months. Learned counsel also submits that petitioners deposed before the Central Excise authorities that they were the claimants of the gold seized by the police and this deposition was made on 17.06.1974 It is thus submitted that the respondent had full knowledge of the seizure.

16. On the other hand, learned counsel for the respondent contends that the respondents were not in possession of the gold but the same was seized by the police authorities and same was handed over to the respondent from the custody

of the police on 24.07.1975. It is thus submitted that the relevant date for the period for six months to expire should be the date when the gold was handed over to the Central Excise department. It is contended that this was so since seizure by the police authorities was on the apprehension that the same was a stolen property.

17. The object of Section 79 is to provide a time frame within which action must be taken against the seized gold and such time period has been specified as six months. The word "seizure" must thus have to be held to be seizure within the purview of the Act for the time period to commence. In the present case, initially the police authorities arrested the petitioners and seized the gold apprehending it to be a stolen property. This has occurred on 31.05.1974 but subsequently the proceedings were withdrawn since admittedly this was not found to be stolen property. There is no doubt that the respondents had knowledge about the seizure of the gold by the police authorities when the statements were made by the petitioners on 07.06.1974 but till that date respondents had not seized the goods. These goods were handed over to respondents only on 27.07.1975. It is only on such handing over that the seizure became one under the provisions of the Act. In my considered view, the effect of this would be that the time period of six months would only commence on the seizure of the gold by the respondent authorities and the seizure of the gold by the police authorities could not be counted against the respondents as a time period within which they were required to take action. That was an action under a different act for a different offence. The show cause notice having been issued on 02.01.1976 is thus within the period of six months of the seizure on 24.07.1975. I thus find no force in the said submission.

18. Learned counsel for the petitioners did seek to contend that the Act itself has been abolished subsequently in view of the problems faced by the goldsmith and thus the impugned order itself should be set aside. I am unable to accept this submission since there is nothing stated in the repeal of the said Act by the Gold Control Repeal Act, 1990 which nullifies the proceedings which have culminated under the said Act.

19. In view of the aforesaid position, I find no merit in the writ petition and the same is dismissed leaving the parties to bear their own costs.