(1989) 04 BOM CK 0050

In the Bombay High Court

Case No : Writ Petition No. 899 of 1980

Tolaram Murarka APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 21-04-1989

Acts Referred:
Gold (Control) Act, 1968 — Section 16(1), 27(1)

Citation : (1989) 24 ECR 753

Hon'ble Judges : W.M. Sambre, J;H.D. Patel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

H.D. Patel, J.—The petitioners, who are the legal representatives of late Madanlal Harjimal Murarka, have filed this petition seeking to quash the order passed in revision by the Special Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi on 4.10.1979 upholding the order passed by the Collector, Central Excise, Nagpur on 15.4.1975 and the order passed in appeal by the Under Secretary, Government of India, Ministry of Finance, Department of Revenue on 26.7.1977 in respect of two hexagonal rounded gold rods weighing 233 grams.

2. The case arose out of the seizure of 7840.800 grams of gold and gold ornaments from the premises of late Madanlal by the Gold Control Officer on 27th and 28th July, 1974. By a show cause notice late Shri Madanlal was charged for contravention of Sections 8(1), 16(1) and 27(1) of the Gold (Control) Act, 1968 (hereinafter referred to as "the Act"). Upon adjudication by the Collector of Central Excise, Nagpur, he found the charges for contravening Sections 8(1) and 16(1) of the Act established against late Shri Madanlal. Accordingly the order of confiscation of 316.500 grams of primary gold was passed. He also confiscated the gold ornaments weighing 5992.700 grams, but allowed the same to be redeemed on payment of Rs. 1000/-. Besides gold and gold ornaments, the adjudicating authority ordered confiscation of 903 silver coins u/s 71(2) of the

Act, but allowed them to be redeemed on payment of fine of Rs. 1000/-. The adjudicating authority, however, released four sovereigns, gold ornaments weighing 1500 grams and some silver ornaments along with Indian currency. A penalty of Rs. 1000/- was imposed for contravention of Sections 8(1) and 16(1) of the Act. Feeling aggrieved by the order, an appeal was preferred under Sub-section (1) of Section 82 of the Act. The Appellate Tribunal refused to interfere with the order passed by the Collector, Central Excise, Nagpur, and dismissed the appeal. Against that order late Madanlal preferred a revision application. The Revisional Authority allowed the revision partially by setting aside the order of confiscation of 903 silver coins. Rest of the order remained unchanged. All the three orders are now impugned in this petition.

3. The main ground of attack on behalf of the petitioners was in respect of the classification made to the two pieces of Kadas as primary gold and not as ornament as defined tinder Section 2(p) of the Act. The contention was that the cross section of the rod was hexagonal and had three faint punch marks at the ends, which showed that the rods were ornaments actually used by late Madanlal by wearing them on his hands. All the three authorities concurrently found that the so-called kadas did not satisfy the requirements of an ornament inasmuch as they were in crude form, cut ends were not rounded, unfinished, unpolished and made out by drawing it from a die. The two rods were inspected by the authorities and having regard to its purity, weight and workmanship, these pieces were held not to be an ornament as defined u/s 2(p) of the Act. Instead these two items were considered as primary gold. We find no reason to interfere with this finding in exercise of the powers under Articles 226 and 227 of the Constitution.

4. An attempt was made to show that Section 8 of the Act totally prohibits possession of primary gold and this prohibition is violative of the petitioners'' fundamental right to acquire, hold or dispose of the property in the form of primary gold as it is not in the interest of general public. Such a challenge is no longer open, because the said contention was rejected by the Supreme Court in Badri Prasad and Others, etc. Vs. Collector of Central Excise and Others, etc., .

5. One more contention was raised on behalf of the petitioners and that was that they should be allowed to exercise an option to pay such fine in lieu of confiscation as provided u/s 73 of the Act in respect of the two gold Kadas, which are held to be the primary gold. In other words, the two Kadas, which are nothing but rods should not be confiscated and returned back to the petitioners for making gold ornaments. We are unable to do so because Section 73 of the Act does not contemplate to include primary gold to be returned back on being redeemed on payment of fine. Section 73 contemplates only such article or thing made of or containing gold of any purity, whether such purity exceeds nine carats or not. This is clear by reading Section 76 of the Act.

6. In the aforesaid circumstances, the writ petition is devoid of any merit and is accordingly rejected without any order as to costs.