

Issardas Daulat Ram and Others

Vs

The Union of India and Others

Civil Appeal No. 591 of 1960

(P. B. Gajendragadkar, A. K. Sarkar, K. N. Wanchoo, K. C. Das Gupta, N. Rajgopala Ayyangar JJ)

13.11.1961

JUDGMENT

AYYANGAR, J. –

This appeal comes before us by virtue of leave granted by this Court under Art. 136(1) of the constitution and is directed against the judgment and order of the Punjab High Court by which a Writ Petition filed before it by the appellants, under Art. 226 of the constitution was summarily dismissed.

The point raised for our consideration relates to the legality of an order of confiscation, by the Customs Authorities, of certain gold belonging to the appellants on the ground of its being smuggled. The appellants are the partners of a Joint Hindu Family firm carrying on business in Bombay in inter alia gold and jewellery. On September 14, 1954, the appellant-firm had despatched to the Bombay Bullion Refinery for the purpose of melting about 500 tolas of gold. Certain Customs officers received information that some quantity of gold which was believed to be smuggled was being sent to the refinery for melting and in pursuance of this information they went to the refinery and found the gold bullion which is the subject of these proceedings placed in a crucible for the purpose of being melted. These officers ascertained from the Manager of the refinery that this gold belonged to the appellant-firm who were later contacted and who admitted their ownership of the gold. The gold was thereupon seized and investigation started for ascertaining whether the gold was or was not smuggled gold after which the Assistant Collector of Customs issued a notice to the appellants on January 31, 1955, to show cause why the gold should not be confiscated under s. 167(8) of the Sea Customs Act. The appellants appeared in response to this notice and were granted a personal hearing, their Counsel being heard in support of their plea that the gold was not smuggled and so not liable to be confiscated. Their defence was however rejected and the Collector of Customs who adjudicated in this matter under s. 182 of the Sea Customs Act passed an order on August 25, 1955, directing the confiscation. From this order appeals and revisions were preferred which were unsuccessful. Thereafter the appellants filed a Writ Petition before the High Court of Punjab with the result already stated.

It will be seen from the above narrative that the case is not covered by s. 178(A) of the Sea Customs Act which was enacted by Central Act 21 of 1955 since the seizure and the proceedings in this case were long anterior to the enactment of that section and cannot obviously be governed by its provisions. For the reason that s. 178(A) was in force at the stage of the appeals from the order of the Collector of Customs to the Central Board of Revenue and the Central Government and possibly under the impression that their case had been decided by throwing on them the burden of proving that the gold was not smuggled, the appellants raised in their Writ Petition to the Punjab High Court

points regarding the construction and constitutionality of s. 178(A). When their Petition was summarily dismissed these points were repeated in the petition for special leave to appeal filed in this Court, and special leave appears to have been granted mainly for the reason that the appeal involved the question of the constitutionality of s. 178(A) of the Sea Customs Act. The appeal has for that reason been posted for hearing after the decision of this Court in Collector of Customs, Madras v. Nathella Sampathu Chetty [[1962] 3 S.C.R. 786], in which the validity of section was considered and upheld.

Section 178(A) being put aside, it may be added, the only question now arising for decision is whether the order of the Collector of Customs holding the appellant's gold seized at the refinery to be smuggled gold so as to be liable to confiscation under s. 167(8) of the Sea Customs Act is vitiated by any error such as to call for interference under Art. 226 of the Constitution. Section 167(8) runs in these terms.

"167. The offences mentioned in the first column of the following schedule shall be punishable to the extent mentioned in the third column of the same with reference to such offences respectively:-

#Offences Section of this Act Penalties to which offence has reference.(8) If any goods 18 & 19 such goods shall be the importation or liable to confiscation;exportation of which & any person concerned is for the time being in any such offence prohibited or restricted shall be liable to abide by or under Chapter IV penalty not exceeding of this Act, be imported three times the value into or exported from of the goods, or not India contrary to such exceeding one thousand prohibition or restriction; rupees.".....##

The finding of the Collector is recorded in paragraph 6 of his order in these terms :

"Taking all the available evidence into consideration, I am satisfied that the gold bullion in question is of foreign origin and had been imported into India in contravention of Foreign Exchange Regulations Act, and Section 19 of the Sea Customs Act thereby establishing an offence attracting the provisions of Section 167(8) of the Sea Customs Act."

It was not disputed that if there was material to support this decision the appeal must fail. The conclusion of the Collector involves finding on two distinct matters : (1) that the gold which was the subject of adjudication was of foreign origin, and (2) that that gold had been imported in contravention of the Foreign Exchange Regulations Act. Mr. Viswanatha Sastri - learned Counsel for the appellant submitted that though the several facts mentioned by the Collector in paragraph 5 of his order which form the basis of the finding recorded in paragraph 6 might show that the gold was of foreign origin, there was no evidence before the Collector that this foreign gold had been imported after restrictions had been imposed in March 1947 by notification under the Foreign Exchange Regulations Act, a fact the onus to prove which was also on the department, and that in the absence of any material supporting that conclusion the finding that the gold was smuggled was unsustainable and that the confiscation should therefore be set aside.

We find ourselves unable to accept the submission of learned Counsel. Though, no doubt, there was no direct evidence that the gold which was the subject of adjudication had come into the country after March 25, 1947, when the first notification under the Foreign Exchange Regulations Act

placing a ban on the importation of gold was issued, it is not as if this could not be deduced or inferred otherwise. There was been little or no importation of gold from outside the country since 1947. If the gold now in question had been imported earlier it would be extremely improbable that the gold would remain in the same shape of bars and with the same fineness as when imported after the passage of this length of time. It was precisely for this reason that at the stage of the enquiry before the Collector the principal point which was urged on behalf of the appellants was to deny that the seized gold was of foreign origin and it is the nature of the defence that accounts for the order of the Collector dealing almost wholly with the consideration of that question. In order to reach his finding about the gold being smuggled; the Collector has referred to the conduct of the appellants in connection with (a) the credibility of the story about the purchase of this gold from three parties, (b) the price at which the gold was stated to have been purchased which was less than the market price, and (c) the hurry exhibited in trying to get the gold melted at the refinery with a small bit of silver added so as to reduce the fineness of the gold and thus approximate the resultant product to licit gold found in the market. These were undoubtedly relevant pieces of evidence which bore on the question regarding the character of the gold, whether it was licit or illicit. Learned Counsel is, therefore not right in his submission regarding the absence of material before the Collector to justify the finding recorded in paragraph 6 we have set out earlier. The Writ Petition was therefore properly dismissed by the learned Judges of the High Court.

The appeal is dismissed with costs.

Appeal dismissed.

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