IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.392 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

==

Sheoji Prasad Gupta, son of Late Bishun Sah, Proprietor James Jeweller, Sahebganj, Chapra, District - Saran. At present residing at S.P. Verma Road, J.D. Moll Patna, P.S.- Gandhi Maidan, District - Patna.

.... Petitioner

Versus

1. The Union of India (Custom), through the Chief Commissioner, Eastern Central Revenue Building, Birchand Patel Path Patna, P.S.- Kotwali, Patna.
2. The Commissioner Custom, Central Revenue Building, Birchand Patel Path Patna, P.S.- Kotwali, Patna.
3. The Joint Commissioner Customs, Central Revenue Building, Birchand Patel Path Patna, P.S.- Kotwali, Patna.
4. The Deputy Commissioner Customs, Indo-Nepal Border, Muzaffarpur.
5. The Deputy Commissioner, Customs, Customs House, Raxaul, East Champaran.
6. The Assistant Collector, Customs, Land Custom Station, Raxaul, East Champaran.
7. The Commissioner Appeals, Customs and Excise, Revenue Building, Patna.
8. The Custom Inspector cum Seizure Officer, Land Custom Station Raxaul, East Champaran.

.... Respondents

==

Appearance :

For the Petitioner	:	Mr. Sheoji Prasad Gupta, In person
For the Respondents	:	Mr. Satya Prakash Tripathy, Advocate
		Mr. Satya Vrat, Advocate

==

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

Date: 31-08-2016

Heard the petitioner in person and learned counsels for the respondents.

In the year 1990, the Customs Department allegedly seized gold from rectum of two persons said to be employees of the petitioner on an allegation that gold of foreign origin was being tried to be smuggled in India for the petitioner.

Pursuant to the aforesaid seizure, two proceedings were taken up. One, in terms of the Customs Act, a proceeding for penalty and confiscation of the seized gold was started by the Custom Authorities, and second, a criminal case was instituted against the petitioner and his two associates. Without going into the details, suffice it to say that the Custom Authorities passed the confiscation order *ex parte*. The petitioner alleges that he came to know of these proceedings in course of criminal proceedings before the Judicial Magistrate empowered to try custom offences at Muzaffarpur. He, then, filed an appeal before the Joint Commissioner of Customs which was dismissed as barred by limitation. He approached the Customs, Excise & Service Tax Appellate Tribunal (for brevity, the 'Tribunal') at Kolkata. The Tribunal set aside the order of the Assistant Commissioner, Customs, who dismissed the appeal on grounds of limitation and directed the Assistant Commissioner, Customs to decide the case afresh on merits.

This time the Assistant Commissioner of Customs decided the case against the petitioner and ordered for confiscation of the seized gold and also imposed penalty of Rs. 1,00,000/-. The associates of petitioner did not appeal. Petitioner appealed before the Tribunal at Kolkata without success. The appeal was heard on merits and was dismissed. He challenged this order in Miscellaneous Appeal before this Court. The Division Bench of this Court, in the Miscellaneous Appeal, so filed, dismissed the appeal upholding the order of the Tribunal. The said order, as passed by the Division Bench of this Court, has attained finality. The petitioner has not filed any appeal against it nor challenged it in any judicial forum. The order, thus, has attained finality. The result is that the gold, so seized, has now, consequent to confiscation, vested in the Government. Payment of penalty is due from the petitioner. Department has noticed the petitioner for payment of penalty.

In so far as the criminal trial is concerned, in the year 2011, the petitioner and his associates were convicted and sentenced to three years rigorous imprisonment for having smuggled gold of foreign origin. The appeal has been filed by the petitioner and his associates, vide Cr. Appeal No.

35 of 2011, which is pending in the court of learned 1^{st} Additional Sessions Judge, Muzaffarpur.

By this writ petition, petitioner wants to know as to what happened to his gold. The simple answer is that there is no gold left. The gold has vested in the government which order has attained finality.

Petitioner, then, submits that he has challenged right from beginning that, in fact, the gold that was seized was being duly brought in on permits and passes duly issued. It was not gold of foreign marking. Petitioner has further asserted that though the gold was seized in the year 1990, it was deposited in the Government mint for melting on 18.04.1991 itself without any order from Court, but the Certification by the Magistrate in terms of Section 110A is said to have been done on 20.01.2000 when no gold was available, which shows the falsity of all the events.

From the affidavit filed on record, it appears that gold had since been deposited in the Government mint and has been melted. Petitioner submits that this will cause him great prejudice, inasmuch as his whole case is that it was not gold with foreign marking.

Having considered the matter, in my opinion, whether gold was of foreign marking or not, whether it was being legitimately brought in India or not, are all questions of facts which are sub-judice in Criminal Appeal as filed by the petitioner. It will be open to the petitioner to move the said criminal court for whatever relief he wants in respect thereof either to discredit or impeach the prosecution evidence. This Court, in a collateral proceeding, cannot preempt the criminal court from doing its duty. The criminal court has the necessary jurisdiction to pass all orders that are required in the facts of the case. Therefore, it will not be appropriate for this Court to interfere in the matter at this stage.

Under the facts and circumstances as noted above, this writ petition has no merit and, accordingly, it stands dismissed.

(Navaniti Prasad Singh, J.)

Rajeev/N.A.F.R.

U		T	