

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1154 of 2022

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M/S Om Gold House Shakuntala Palace Bakerganj, Patna- 800004, through its Proprietor Mithilesh Kumar aged about 52 Years (Male), Son of Shree Ramlakhan Prasad, R/o-Behind R.B.I, Salimpur, Ahara, Phulwari, P.S.- Gandhi Maidan, District-Patna.

... .. Petitioner/s

Versus

1. The Union of India through Director General, Bureau of Indian Standards, Ministry of Consumer Affairs With its Headquarters Manak Bhawan, 9 Bahadur Shah Zafar Marg, New Delhi-110002.
2. Deputy Director General (Eastern),s Bureau of Indian Standards, Ministry of Consumer Affairs, BIS Eastern Regional Office, Kolkata.
3. Bureau of Indian Standards (BIS), Patna Branch Office (PTBO) through its Scientist-D and Head, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Ms. Shama Sinha, Advocate
For the Respondent/s	:	Dr. Krishna Nandan Singh, A.S.G. Mr. Anshay Bahadur Mathur, CGC

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 07-03-2022

Petitioner has prayed for the following relief(s):-

1. That this is a petition on behalf of above named Petitioner through its proprietor for issuance of an appropriate Writ(s)/Order(s)/Direction(s) for release the 113 (one hundred thirteen) pieces of gold jewelry with BIS hallmark, 18K 750 (as mentioned in Annexure- 2) forfeited in pursuance to the order dated 25.09.2020 passed by Respondent no. 2 who has no jurisdiction to pass the order u/s 32(4) of BIS Act, 2016 and for any other relief(s), which



this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

We are of the considered view that petitioner does have an equally alternative and efficacious remedy under the provisions of the Bureau of Indian Standards Act, 2016 (hereinafter referred to as the 'Act').

In terms of the impugned order dated 25.09.2020 (Annexure-1 Page 16), the authority has directed forfeiture of certain goods i.e. gold ornaments seized from the custody and possession of the petitioner. The officer has also imposed fine of Rs. One lac to be recovered from the proprietor of the firm. Immunity for prosecution also stands granted.

Ms. Shama Sinha, learned counsel for the petitioner, argues that goods seized were bearing the BIS mark, which fact has not been held to be so by the appellate authority.

We notice that Section 32 of the Act deals with criminal prosecution in relation to the offences committed under the Act and Section 33 deals with power to compound such offences. Quite apparently, no action stands initiated against the petitioner under the said provision.

Section 15 of the Act prohibits import, sale,



storage, distribution and exhibition of any goods or articles, save and except, certified from the Bureau.

Bureau has been defined to be an authority established under Section 3 of the Act.

Section 17 of the Act prohibits manufacture, import, distribution, sale, hire, lease, storage or exhibition of any sale of goods, articles, process, system or service compulsorily required to be stamped with the standard mark, as envisaged under Section 16 of the Act.

The stamping, of course, has to be with a standard mark by a valid license holder.

The standard mark stands defined under subsection (40) of Section 2 of the Act.

Whether the goods were having the hallmark or as to whether the person selling the same had the license to do so or not, is something which this Court can go into, unless the final fact finding adjudicatory authority examines the issue and records its findings.

In our considered view, all issues raised herein can be best examined by the appellate authority constituted under Section 34 of the Act.

As such, on this short ground alone, we are not



inclined to issue notice and entertain the present petition, which is disposed of reserving liberty to the petitioner to take recourse to such remedy as is otherwise available, in accordance with law.

We notice that the impugned order is dated 25.09.2020 and the petition was filed only on 17.02.2022. The period for which this petition was pending, shall be excluded for the purpose of limitation, should the petitioner challenge the order by way of an appeal.

Interlocutory application, if any, shall also stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	10.03.2022
Transmission Date	

