IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	30.10.2024
Pronounced on	31.01.2025

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.5247 of 2024

Ms.Sabeena Mohammed Moidenn

... Petitioner

Vs.

1.The Principal Commissioner of Customs,
(Airport and Air Cargo Complex),
New Custom House,
Meenambakkam, Chennai 600 027.

2.Assistant Commissioner of Customs, (A Batch),
Anna International Airport, GST Road,
Meenambakkam, Chennai 600 027.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to act on the petitioner's representation dated 08.02.2024 and cause release of the 10 nos. of bangles weighing about 135 grams taken from my custody on

15.01.2024 by the officers of the 2nd respondent under Detention Memo No.18450 dated 15.01.2024.

For Petitioner	:	Mr.B.Satish Sundar
For Respondents	:	Mr.M.Santhanaraman, Senior Standing counsel

ORDER

This writ petition has been filed to direct the respondents to act on the petitioner's representation dated 08.02.2024 and cause release of the 10 nos. of bangles weighing about 135 grams taken from my custody on 15.01.2024 by the officers of the 2nd respondent under Detention Memo No.18450 dated 15.01.2024.

2. It is the case of the petitioner that she is a resident of Chennai and her husband is an IT professional working in Abudhabi. Out of his earnings and savings, the petitioner and her husband acquired substantial properties, including movables in the form of jewellery, from time to time.

3. Further, the petitioner would submit that she embarked on a visit to Abudhabi on 24.12.2023 to be with her husband, made a social visit as also attend a marriage function of one Aamir Ali, a close relative. The petitioner has filed the marriage invitation and the photos taken along with the bride and groom at Abudhabi. She undertook the visit along with her 2 children and was wearing 10 numbers of gold bangles, chain and a ring as part of her person when she left for abroad.

4. After completing her visit, when she returned to India, at International Airport, Chennai, the officer attached to 2nd respondent had detained the 10 nos. of gold bangles, which worn by her person, stating that it is the case of importation in contravention of the Baggage Rules and provisions of the Customs Act, 1962. The bangles weighing about 135 grams taken from the custody of the petitioner by the 2nd respondent's officials on 15.01.2024 under the Detention Mmemo No.18450 dated 15.01.2024.

5. The learned counsel appearing for the petitioner would further submit that the aforesaid bangles were old, which were purchased about 12 years back and she wore the bangles, chains, etc., to Abu Dhabi only for the purpose of attending friend's marriage at Abu Dhabi and thereafter, returned back with the bangles, which were worn by her.

6. He would also submit that the 2nd respondent-officials directed the petitioner to handover the 10 nos. of bangles and the same was removed from her hand and handed over to the officials. However, they have not asked anything about the gold chain and ring.

7. According to the petitioner, these bangles were not hided in any way and hence, it is proprietorial rights of the petitioner to hold movables in the form of jewelery and bangles. Further, he would submit that any person is entitled to be in possession of movables on the account of their social standing and afford ability.

8. Further, the provisions of the Customs Act, 1962, also does not

provide any prohibition for wearing the gold jewelery and only the Act fixed the limitation to carry the baggage. Section 101 and 102 of the Customs Act, 1962, deal with the provisions as to if any material was secreted in their body. In the present case, no such things were secreted and it was openly worn by her in both hands, which is easily visible to anyone. Therefore, the question of secreting does not arise and since the said gold was not secreted in her body in terms of the provisions of Section 101, there is no prohibition for wearing the same. In such case, the detention made by the 2nd respondent is against the Baggage Rules, 2016 and also in contravention to the provisions of Sections 79 and 101 of the Customs Act, 1962.

9. Further, he would submit that the petitioner has also made a representation on 08.02.2024 to release the bangles, which was taken from her custody on 15.01.2024 by the 2nd respondent officials under the Detention Memo No.18450 dated 15.01.2024. However, the same is yet to be disposed of. Hence, the present writ petition.

10. In reply, the learned Senior Standing counsel appearing for the respondents had filed a counter, wherein they had denied the averments made in the affidavit in general. However, there was no specific denial about the allegations made by the petitioner against the officials vide the affidavit dated 18.02.2024.

11. The respondents had admitted the fact that the petitioner worn the gold bangles at the time of arrival, however, the main concern of the respondents was that the said gold ornament exceeds the prescribed limit as per the Baggage Rules, 2016. Therefore, according to them, for 135 grams of gold, the petitioner is liable to pay customs duty at the rate of 44% to the value of a sum of Rs.7,60,903.20.

12. Further, at paragraph 8 of the counter affidavit, by referring the Frequently Asked Questions (FAQ), the respondents had contended with regard to the obtaining of Export Certificate, which reads as follows:

"Outgoing Passengers:

Question: What should you do when you leave India for abroad?

Answer: All the passengers leaving India are subject to clearance by Custom Authorities. Only bonafide baggage is allowed to be cleared by passengers. There is a procedure prescribed whereby the passengers leaving India can take the Export Certificate for various high value items such as camera, video camera as well as jewelery, from the Customs authorities. Such an Export Certificate facilities re-importation of such goods while bringing back the things to India as not duty is charged. The advantage of having the Export Certificate is that the concessions you are entitled to, when you return are not affected.

and

Question.26. What are the norms for re-import of personal jewellery carried with the passenger?

Answer: All the passengers leaving India are subject to clearance by Custom Authorities. Only bonafide baggage is allowed to be cleared by passengers. There is a procedure prescribed whereby the passengers leaving India can take the Export Certificate for various high value items such as jewellery, from the Customs authorities. Such an Export Certificate facilitates re-importation of such goods *while bringing back the things to India as no duty is charged. The advantage of having the Export Certificate is that the concessions you are entitled to, when you return are not affected."*

13. By referring the above FAQ, he would submit that the jewelery worn by her was supposed to be baggage, for which, she is supposed to have obtained the Export Certificate from the valuer for exportation, in which case, the present issue would not have arisen. However, no such certificate was obtained by the petitioner for the gold worn by her, which exceeds the prescribed limit and therefore, the same was not released to her.

14. In reply, the learned counsel for the petitioner would submit that in the present case, the 10 nos. of bangles were worn by the passenger on her hands and no personal effects in the form of gold jeweleries were kept in the baggage.

15. In the provisions of Rule 3(1) of the Baggage Rules, 2016, it has been stated that the used personal effects, travel souvenirs and the articles other than those mentioned in Annexure-I, up to the value of fifty thousand rupees if these are carried on the person or in the accompanied baggage of the passenger.

16. By referring the aforesaid provision, he would submit that only if any personal jeweleries were kept in baggage, the Baggage Rule will apply. However, if it is carried on the person, i.e., if the jeweleries were worn by the passenger, in such case, the Baggage Rule is beyond the scope of the provisions of Section 79 of the Customs Act, 1962.

17. The learned Senior Standing counsel appearing for the respondents had referred the judgment of the Hon'ble Division Bench of this Court rendered in ***CMA.No.1716 of 2020*** [The Principal Commissioner or Customs vs. Ahamed Gani Natchiar] dated 01.09.2022, wherein it was held that the Baggage includes the “personal effects”.

18. However, the learned counsel for the petitioner would submit that in the aforesaid order, the Division Bench has categorically mentioned that the definition of "Baggage" under the Customs Act, 1962 and the Baggage Rules would appear to suggest that the definition of "Baggage" for the purpose of Baggage Rules, 2016, is wider than the definition of "Baggage" under Section 2(3) of the Customs Act, 1962. Though the said Rule has been made beyond the scope of the Statute, the Court has no occasion to deal with the aspect of the scope of the Rule with regard to the inclusion of the word "carried on the person" in the Baggage Rules, 2016. Therefore, he would submit that when a person worn the jewelery, the Baggage Rule will not apply since the same is beyond the scope of the Act. Hence, he would submit that the detaining of gold under the said Rule is contrary to the provisions of the Act.

19. Further, he would submit that it is not the case of the respondents that the petitioner has secreted the gold, for which the search has to be conducted. The gold bangles were openly worn by the petitioner only for the purpose of attending a marriage, which is the

customs of our Country. Normally, it is their proprietorial rights to wear jewels for a marriage function and it cannot be questioned. With that idea only, the Parliament has not enacted anything with regard to the "personal effects". However, by virtue of definition in Rule 3 of the Baggage Rules, 2016, the Central Government has included the word "carried on the person", which is totally beyond the scope of the provisions of the Customs Act, 1962.

20. Therefore, he requests this Court to pass appropriate orders to release the 10 nos. of bangles weighing about 135 grams taken from the petitioner's custody on 15.01.2024 by the officers of the 2nd respondent under Detention Memo No.18450 dated 15.01.2024.

21. I have given conscious consideration to the submissions made by the learned counsel appearing for the petitioner and the learned Senior Standing counsel appearing for the respondents and also perused the materials available on record.

22. In the case on hand, the petitioner had traveled to Abu Dhabi to visit her husband and also to attend her friend's marriage function. As a proof for attending the marriage, the marriage photos and the marriage invitation card were filed along with the typed set of papers.

23. According to the petitioner, at the time of boarding at Abu Dhabi, she worn gold jeweleries, viz., bangles, chain, ring, etc., and when she arrived at Chennai International Airport, the officials had stopped her and seized her 10 nos. of bangles, weighing about 135 grams, by stating that she had carried the quantity of gold, which exceeds the limit prescribed in the Baggage Rules, 2016.

24. In this regard, an order of this Court rendered in CMA.No.1716 of 2020 has been referred by the learned Senior Standing counsel for the respondent. In the said judgment, the Hon'ble Division Bench of this Court has framed an issue as to *whether the jewelery worn on the person would constitute "Baggage"*.

25. The Division Bench had answered the issue by plain reading of the Baggage Rules, 2016 and arrived at a conclusion that in terms of Rule 3 of the Baggage Rules, 2016, the jewelery worn by the passenger, who had arrived from abroad would be considered as “Baggage”. However, in the same judgment, the Hon'ble Division Bench has held that the definition of “Baggage” under the Customs Act, 1962, and the Baggage Rules would appear to suggest that the definition of “Baggage” for the purpose of Baggage Rules, 2016 is wider than the definition of “Baggage” under Section 2(3) of the Customs Act, 1962. The relevant portion of the judgment is as follows:

> *“A reading of the definition of "Baggage" under the Customs Act, 1962 and the Baggage Rules would appear to suggest that the definition of "Baggage" for the purpose of Baggage Rules, 2016 is wider than the definition of "Baggage" under Section 2 (3) of the Customs Act, 1962.”*

26. Though the Hon'ble Division Bench has arrived at the above conclusion that the definition of “baggage” under the Baggage Rules, 2016 is wider than the definition of “baggage” under the Customs Act, 1962, it had no occasion to deal with the aspect as to whether the

Baggage Rules, 2016, can override the Statute (Section 79 of the Customs Act, 1962), since no issue was framed and no arguments were made on that aspect.

27. In the present case, the learned counsel appearing for the petitioner has made arguments on the aspect that Rule 3 of Baggage Rules, 2016, is beyond the scope of the provisions of Section 79 of the Customs Act, 1962 (Act). Therefore, this Court is bound to answer with regard to the aspect as to whether the Rule is beyond the scope of the Statute (Section 79 of the Act), in which case, at what extent, the Rules can be followed has to be determined by this Court in the present case.

28. At this juncture, it would be apposite to extract Section 79 of the Customs Act, 1962, which reads as follows:

79. Bona fide baggage exempted from duty.

(1)The proper officer may, subject to any rules made under sub-section (2), pass free of duty-

(a)any article in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it has

been in his use for such minimum period as may be specified in the rules;

(b)any article in the baggage of a passenger in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a bona fide gift or souvenir; provided that the value of each such article and the total value of all such articles does not exceed such limits as may be specified in the rules.

(2)The Central Government may make rules for the purpose of carrying out the provisions of this section and, in particular, such rules may specify-

(a)the minimum period for which any article has been used by a passenger or a member of the crew for the purpose of clause (a) of sub-section (1);

(b)the maximum value of any individual article and the maximum total value of all the articles which may be passed free of duty under clause (b) of sub-section (1);

(c)the conditions (to be fulfilled before or after clearance) subject to which any baggage may be passed free of duty.

(3)Different rules may be made under sub-section (2) for different classes of persons.

29. A reading of the above provisions would show that the proper officer may subject to any Rules made under Sub-Section (2), if any

article in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules.

30. Thus, it states that for any article in the baggage of a passenger in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a bona fide gift or souvenir; the total value of all such articles does not exceed such limits as may be specified in the Rules. Hence, Section 79 talks about **"anything in the baggage"**. For the purpose of carrying out the provisions of this Section, the Section 79(2) enables the Central Government to make the Rules as follows:

> i) The minimum period for which any article has been used by a passenger or a member of the crew for the purpose of clause (a) of sub-section (1);
>
> ii) the maximum value of any individual article and the maximum total value of all the articles which may be passed free of duty under clause (b) of sub-section (1);
>
> iii) the conditions (to be fulfilled before or after clearance) subject to which any baggage may be passed

free of duty.

31. From the reading of the above, it is clear that the Act enables the Central Government to make the Rules only with regard to the baggage. At this juncture, it would be apposite to extract the definition of baggage under the Act, which reads as follows:

Section 2(3) of the Customs Act:

(3) "baggage" includes unaccompanied baggage but does not include motor vehicles;

32. A reading of the above definition would show that baggage includes unaccompanied baggage and does not include motor vehicles. At this juncture, it would also be apposite to extract Rule 3 of the Baggage Rules, which reads as follows:

"3. Passenger arriving from countries other than Nepal, Bhutan or Myanmar.-An Indian resident or a foreigner residing in India or a tourist of Indian origin, not being an infant arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide Baggage, that is to say, -

(a) used personal effects and travel souvenirs; and

(b) articles other than those mentioned in Annexure-I, upto the value of fifty thousand rupees if these are carried on the person or in the accompanied Baggage of the passenger:

Provided that a tourist of foreign origin, not being an infant, shall be allowed clearance free of duty articles in his bona fide Baggage, that is to say, (a) used personal effects and travel souvenirs; and (b) articles other than those mentioned in Annexure- I, upto the value of fifteen thousand rupees if these are carried on the person or in the accompanied Baggage of the passenger:

Provided further that where the passenger is an infant, only used personal effects shall be allowed duty free. Explanation.- The free allowance of a passenger under this rule shall not be allowed to pool with the free allowance of any other passenger.

ii) Definition of Baggage under the Customs Act, 1962:

"(2)(3) - "Baggage" includes unaccompanied Baggage but does not include motor vehicles; "

33. As discussed by the Hon'ble Division Bench in the CMA

referred supra, a reading of the above definition of "baggage" under Customs Act, 1962, and Baggage Rules, 2016, makes it clear that the definition of "baggage" under the Baggage Rules is wider than the definition of "baggage" under the Customs Act. Further, in the Rule it has been stated as follows:

> *"3. Passenger arriving from countries other than Nepal, Bhutan or Myanmar.-An Indian resident or a foreigner residing in India or a tourist of Indian origin, not being an infant arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide Baggage, that is to say, -*
>
> *(a) used personal effects and travel souvenirs; and*
>
> *(b) articles other than those mentioned in Annexure-I, upto the value of fifty thousand rupees if these are carried on the person or in the accompanied Baggage of the passenger:*

34. From a perusal of above provision, it is clear that the Clause

(b) includes the articles other than those mentioned in Annexure-I, upto the value of fifty thousand rupees if these are '**carried on the person'** or in the accompanied Baggage of the passenger

35. The Customs Act, 1962, enables the Central Government to make Rules to the extent of the articles carried in the baggage of a passenger and not for the articles, which were carried on the person and hence, the inclusion of the word *"carried on the person"* is beyond the scope of the provisions of Section 79 of the Customs Act.

36. When the provision of the Rule is beyond the scope of the provisions of the Act, only the provision of the Act will prevail over the Rules. Thus, the word "carried on the person up to Rs.50,000/-" is clearly beyond the scope of the Act and it cannot be given any effect since it is contrary to the provisions of the Statute. Thus, it has to be construed only for the articles, which have not been mentioned in Annexure-1 and carried in the accompanied baggage of a passenger. In such case, the application of Baggage Rules, 2016, would not arise.

Thus, the jewelery worn by the passenger will not fall within the provisions of the Baggage Rules, 2016.

37. On the other hand, if anyone worn any unreasonable amount of gold or jeweleries, they shall be brought under search, however, in the present case, it is not so. In India, as per our customs, it is normal to wear 10 nos. of bangles for a marriage function. In such case, it is for the Officers to apply their mind while detaining the gold. If 10 nos. of chains were worn by a person, then it would be suspectable and if anything is hide, then the provisions of Section 101 and 102 of the Customs Act, 1962, would apply since it clearly amounts to secreting the gold in their body under the pretext of worn in the body.

38. Considering the above aspect only, while enacting the provisions of the Customs Act, the Parliament has consciously excluded the jewels worn by the passengers. If there is any intention to put all the passengers into hassle, disrespecting their proprietorial rights, dignity, forgoing the customs, against the fundamental rights, let the Parliament

take a decision and amend the provisions of the Act. Till then, the Officers have to apply their minds with regard to detaining the passenger and the gold worn by them as the same would not fall within the purview of the Baggage Rules, 2016.

39. The Doctrine of ultra vires states that the Rule making body must function within the purview of the Rule making authority conferred on it by the parent Act. As the body of making rules or regulations, there is no inherent power of its own to make rules, but such power arise only from the Statute and hence, it must necessarily function within the purview of the Statute.

40. In the present case, the Rule making body had made the Baggage Rules as if they are having inherent power of its own to make rules beyond the scope of the Statutes, and they have incorporated the word “carried on the person” as referred above.

41. The ultra vires may arise in several ways such as :-

a) there may be a simple excess of power over what is conferred by the parent Act;

b) the delegated legislation may be inconsistent with the provisions of the parent Act;

c) there may be non-complaince with the procedural requirement as laid down in the parent Act.

In all the above situation, it is the function of the Court is to keep all the Authorities within the confines of the law by supplying the doctrine of ultra vires.

42. In the present case, admittedly, the Rule making Authorities made the Rules by traveling beyond the scope of the Act, which would amount to ultra vires. In such case, the Statute would prevails over the Rules. When such being the case, the Statute referred only with regard to the baggage and therefore, the Rule has to be confined and read only with regard to the baggage and not with regard to the articles “carried on the person”.

43. With regard to the above aspect, in the judgment of the Hon'ble Apex Court rendered in ***Naresh Chandra Agarwal vs. Institute***

of Chartered Accountants of India and others reported in ***2024 SCC OnLine SC 114***, it has been held as follows:

> *"35. From reference to the precedents discussed above and taking an overall view of the instant matter, we proceed to distil and summarise the following legal principles that may be relevant in adjudicating cases where subordinate legislation are challenged on the ground of being 'ultra vires' the parent Act:*
>
> *(a) The doctrine of ultra vires envisages that a Rule making body must function within the purview of the Rule making authority, conferred on it by the parent Act. As the body making Rules or Regulations has no inherent power of its own to make rules, but derives such power only from the statute, it must necessarily function within the purview of the statute. Delegated legislation should not travel beyond the purview of the parent Act.*
>
> *(b) Ultra vires may arise in several ways; there may be simple excess of power over what is conferred by the parent Act; delegated legislation may be inconsistent with the provisions of the parent Act; there may be non-compliance with the procedural requirement as laid down in the parent Act. It is the function of the courts to keep all authorities within the confines of the law by supplying the*

doctrine of ultra vires.”

44. Further, in the judgment of the Hon'ble Apex Court rendered in ***State of Jammu and Kashmir vs. Lakhwinder Kumar and others*** reported in ***(2013) 6 SCC 333***, it has been held as follows:

> *20. We must answer here an ancillary submission. It is pointed out that the Rules made to give effect to the provisions of the Act have to be consistent with it and if a rule goes beyond what the Act contemplates or is in conflict thereof, the rule must yield to the Act. It is emphasised that Section 80 of the Act confers discretion on the officer within whose command the accused person is serving the choice between criminal court and the Security Force Court without any rider, whereas Rule 41 of the Rules specifies grounds for exercise of discretion. Accordingly, it is submitted that this Rule must yield to Section 80 of the Act. We do not find any substance in this submission.*

45. In the judgment of the Hon'ble Apex Court rendered in ***State***

of Tamil Nadu and Another vs. P.Krishnamurthy and others reported in ***(2006) 4 SCC 517***, it has been held as follows:

> *16. The court considering the validity of a sub-ordinate Legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate Legislation conforms to the parent Statute. Where a Rule is directly inconsistent with a mandatory provision of the Statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non- conformity of the Rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the Parent Act, the court should proceed with caution before declaring invalidity.*
>
> *17. In Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India [1985 (1) SCC 641], this Court referred to several grounds on which a subordinate legislation can be challenged as follows:*
>
> *"75. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be*

questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary."

[Emphasis supplied]

18. In Supreme Court Employees Welfare Association vs. Union of India [1989 (4) SCC 187], this Court held that the validity of a sub-ordinate legislation is open to question if it is ultra vires the Constitution or the governing Act or repugnant to the general principles of the laws of the land or is so arbitrary or unreasonable that no fair-minded authority could ever have made it. It was further held that Rules are liable to be declared invalid if they are manifestly unjust or oppressive or outrageous or directed to be unauthorized and/or violative of general principles of law of the land or so vague that it cannot be predicted with certainty as to what it prohibited or so unreasonable that they cannot be attributed to the power delegated or otherwise discloses bad faith.

19. In Shri Sitaram Sugar Co. Ltd. v. Union of India [1990 (3) SCC 223], a Constitution Bench of this Court reiterated :

> *"Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions, whether characterized as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be "reasonably related to the purposes of the enabling legislation". See Leila Mourning v. Family Publications Service [411 US 356]. If they are manifestly unjust or oppressive or outrageous or directed to an unauthorized end or do not tend in some degree to the accomplishment of the objects of delegation, court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires": per Lord Russel of Killowen, C.J. in Kruse v. Johnson (1898) 2 QB 91."*

20. In St. Johns Teachers Training Institute vs. Regional Director, NCTE [2003 (3) SCC 321], this Court explained the scope and purpose of delegated legislation thus :

"A regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and regulations

are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details. The legislature may, after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of policy. The need for delegated legislation is that they are framed with care and minuteness when the statutory authority making the rule, after coming into force of the Act, is in a better position to adapt the Act to special circumstances. Delegated legislation permits utilization of experience and consultation with interests affected by the practical operation of statutes."

[Emphasis supplied]

46. In the above cases, the Court had held that a Rule Making Authority has to make the Rules within the scope of the parent Act and no Rules shall exceed beyond the scope of the parent Act since it would amount to ultra vires. Thus, in the present case, the Baggage Rule, 2016 will apply only to the baggage and the Rule made to the extent that the article "carried on the person" will not include baggage, which was in excess of powers conferred by the Rule making Authority and would

amount to ultra vires. Therefore, the jewellery worn in person will not come under the purview of baggage.

47. In the case on hand, the 10 nos. of bangles were admittedly worn by the petitioner and on the request of respondents it was handed over to them. Normally, in our country any person will worn this quantity of gold for a marriage and hence, in such case, it appears to be just and reasonable. All these aspects have to be taken into consideration by the respondents. However, since the Baggage Rule, 2016, includes the articles carried on the person, the Officials had treated the same as baggage and hence, this Court does find any fault on the Officials also.

48. Further, since this Court has held that the provision “as carried on the person” of the Baggage Rules, 2016 is ultra vires, the detention of gold under the Baggage Rules, 2016, in the present case would not apply, unless and otherwise if it is secreted in person, for which, the proceedings shall be initiated under Section 101 of the Customs Act, 1962, however, that is not the case of the respondent. The petitioner

worn the 10 nos. of bangles in her hands and thus, there is no secrecy or concealment. Thus, the detention of petitioner's 10 nos. of bangles is neither proper nor in accordance with law.

49. For all the above reasons, this Court is inclined to allow this petition. Accordingly, this writ petition is allowed. The respondents are directed to dispose of the petitioner's representation dated 08.02.2024 and release the goods within a period of 7 days from the date of receipt of copy of this order. No costs.

31.01.2025

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
nsa

To

1.The Principal Commissioner of Customs,
(Airport and Air Cargo Complex),
New Custom House,
Meenambakkam, Chennai 600 027.

2.Assistant Commissioner of Customs, (A Batch),
Anna International Airport, GST Road,
Meenambakkam, Chennai 600 027.

KRISHNAN RAMASAMY.J.,

nsa

W.P.No.5247 of 2024

31.01.2025