



Darshan Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11709 OF 2023

Naresh Girdharilal Pahuja ...Petitioner

Versus

Union of India and Anr. ...Respondents

WITH

WRIT PETITION NO. 11716 OF 2023

James Jeason John ...Petitioner

Versus

Union of India and Anr. ...Respondents

WITH

WRIT PETITION NO. 11722 OF 2023

Mukesh Girdharilal Pahuja ...Petitioner

Versus

Union of India and Anr. ...Respondents

Mr Brijesh Pathak, a/w Adv Pratik Karande, Adv Namasyi
Bhanushali i/b Adv Aditya Talpade, for the Petitioners in
all Petitions.

Mr Jitendra B Mishra, a/w Sangeeta Yadav, Ashutosh Mishra,
for the Respondents.

CORAM: M.S. Sonak &
Jitendra Jain, JJ.

DATED: 17 December 2024

PC:-

1. Heard learned counsel for the parties.
2. In all these petitions, the challenge is to the common judgment and order dated 13 February 2023 made by the revisional authority under the Customs Act, 1962 (“**Customs Act**”), dismissing the revision applications filed by each of these petitioners against orders made by the Commissioner (Appeals) and adjudicating authority under the Customs Act. Accordingly, with the consent of learned counsel for the parties, we dispose of these petitions by a common order.
3. These petitions are directed against concurrent orders made by the adjudicating authority, the Commissioner (Appeals), and the revisional authority, ordering and upholding the confiscation of 36 gold bars weighing 10 Tolas each, totalling 4197 Grams, a cash amount of Rs.2.85 Lakhs, and penalties.
4. Mr Pathak, learned counsel for the petitioners, submits that petitioner - Mukesh Pahuja produced an invoice dated 03 May 2015 regards the gold bars. The authorities did not adequately consider this invoice. Based on the invoice, Mukesh Pahuja’s ownership of the gold bars was established. He submitted that the order of absolute confiscation was not justified in these circumstances. He submitted that not even an option was given to Mukesh Pahuja for paying the redemption fine and releasing gold bars.
5. Mr Pathak submitted that certain statements were recorded, but the petitioners were not adequately given an opportunity to cross-examine. Accordingly, he submits that

there was a violation of natural justice, which vitiates the impugned order.

6. Finally, Mr Pathak submits that the impugned action is grossly disproportionate and, therefore, violates Article 14 of the Constitution of India.

7. Mr Mishra, learned counsel for the respondents, defends the impugned order based on the reasoning reflected therein. He submitted that three authorities have concurrently referred to the gross violations, and there is no perversity in the record of such findings of fact. He submitted that there was full compliance with the principles of natural justice and fair play. He submitted that the petitioners had taken contradictory stands and failed to establish any of them. He referred to the observation in paragraphs 13 and 14 of the revisional authority's impugned order. He submitted that these are not matters where this Court should exercise its extraordinary and discretionary jurisdiction.

8. The rival contentions now fall for our determination.

9. The three orders impugned in these petitions are mainly based on the appreciation of factual material on record. The three orders record the findings of fact upon evaluating this factual material. Therefore, unless perversity is pointed out or a case of the level of the findings being based on no evidence or the findings being contrary to the weight of evidence on record is made out, there is no question of interference.

10. The petitioners have not made out any case for perversity. The findings are well supported by material on record. In any event, our extraordinary jurisdiction cannot be

equated to the appellate jurisdiction. The material on record is sufficient to sustain the adverse findings concurrently recorded by the three authorities. The allegation about the violation of natural justice is also not made out. Full opportunity was granted to the petitioners and only after those findings of fact had been recorded. Accordingly, there is no case made to interfere with the impugned order based on the alleged violation of natural justice.

11. Mukesh Pahuja had produced an invoice dated 03 May 2015 during the adjudication proceedings. However, what is relevant is that the carrier of the gold bars did not carry such an invoice at the time of seizure or the attempt to smuggle these gold bars without making an appropriate declaration to the Customs authorities. Even Mukesh Pahuja who was admittedly on the same flight, neither owned up to the gold bars at the time of seizure nor produced the invoice. The seizure was on 04 May 2015, and it is indeed surprising that the invoice of the gold bars allegedly purchased under the said invoice on 03 May 2015 was not with the carrier at the time of the seizure of gold bars. The invoice refers to making payments for the purchased gold bars within 30 days. There is no material about such payments ever being made. Accordingly, based on the invoice dated 03 May 2015, neither Mukesh Pahuja nor others can claim any indulgence or protest absolute confiscation. The impugned action was warranted and proportionate in the circumstances established.

12. The impugned order made by the revisional authority notes that the gold bars were found in possession of one of the petitioners, Waqas Abdul Hameed Shaikh (A.1), who was about to hand it over to the other petitioner, James John (A2).

The record indicates that A1 had initially claimed ownership of gold bars, and only belatedly, Mukesh Pahuja (A3), who had been travelling on the same flight, claimed ownership of the gold bars by subsequently producing the invoice. The order records the modus operandi to smuggle gold bars, and these findings warrant no interference.

13. Mr Mishra is justified in referring to paragraphs 13 and 14 of the revisional authority's order, which reads as follows:-

“13. The main issue in the case is the quantum and manner in which the impugned gold was being brought into the Country. The option to allow redemption of seized goods is the discretionary power of the adjudicating authority depending on the facts of each case and after examining the merits. In the present case, the manner of concealment being clever and innovative, quantity being large and commercial, there being clear attempt to smuggle gold bars i.e. gold in primary form, is a fit case for absolute confiscation as a deterrent to such offenders. A1 in collusion with A3 had used an innovative plan to smuggle gold bars by transferring the same to a ground handling staff viz A2 who had undeterred access to the airport and could clear the gold without raising suspicion and thereby evade Customs duty. Had it not been for the alertness of the Officers, the applicants would have very well succeeded in their plans. Thus, considering the facts on record and the gravity of offence, the adjudicating authority had rightly ordered for the absolute confiscation of gold. The same was upheld by the appellate authority. In the instant case, an attempt to smuggle the gold bars was made using an innovative method. This clearly indicates that the applicants had no intention to declare the gold in their possession to Customs. Such acts of mis-using the liberalized facilitation process should be meted out with exemplary punishment and the deterrent side of law for which such provisions are made in law needs to be invoked.

14. The gold bars were found in the possession of A1 and he was about to hand it over to A2. Initially, A1 had claimed ownership of the gold and later A3 who had been travelling in the same flight as A1 had claimed ownership of the gold. The innovative plan to smuggle the gold bars had been

hatched by A3 and the services of A1, A3, A4 and A5 had been taken by him. Investigations have revealed that all the 5 applicants were involved in this smuggling sortie; A1 had carried the gold bars from Doha which had been handed over to him by A3 who too was in the flight from Doha to Mumbai. Thereafter, at the airport A2 was supposed to collect the gold bars and take it outside and hand it over to A4 who was waiting there. A5 who was the brother of A3 had introduced him to A4. A4 had contacts with A2 and had made him part of the plan, luring him with monetary consideration. A3 had contact with A1 who had agreed to carry the gold from Doha.”

14. All the authorities have examined the material on record fairly and reasonably. Full opportunity was granted to the petitioners. The three authorities' findings of fact indicate a conspiracy to smuggle gold from Dubai. There were contradictions in the stances raised by the petitioners. From the circumstances, it is apparent that none of the petitioners had no intention to declare the gold in their possession to the Customs authorities. They attempted to evade the law and smuggle this gold. There are certain observations about the complicity of the airline staff. However, we refrain from taking cognisance of such observations because, even independent of such observations, we are satisfied that no case is made out to interfere with the impugned order.

15. The respondents' actions do not involve disproportionality. Considering the modus operandi adopted, we agree with the revisional authority's observations that the element of deterrence was necessary to prevent the misuse of the liberalised facilitation process. The Petitioners attempted to abuse this process and hoodwink the law. Only upon detection were frivolous and belated contentions raised. The three authorities have evaluated them. There is no perversity

in the fact findings concurrently recorded. Accordingly, no case is made out to warrant any interference.

16. For all the above reasons, we find no good grounds to interfere with the impugned order. Accordingly, all these petitions are liable to be dismissed and hereby dismissed without any orders for costs. Interim orders, if any, are vacated.

(Jitendra Jain, J)

(M.S. Sonak, J)