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W.P.No.5005 of 2024

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.5005 of 2024

Thanushika

... Petitioner

Vs.

1.The Principal Commissioner of Customs (Chennai),
Represented by Seizing Agency AIU,
O/o. The Principal Commissioner of Customs,
New Custom House, Meenambakkam,
Chennai 600 027.

2.The Principal Commissioner of Customs (Chennai),
Representated by Seizing Officer S.Mythili,
O/o. The Principal Commissioner of Customs,
New Custom House, 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 direct the respondents to release
the gold ornaments inappropriately seized by the respondents vide



Seizure/Detention file Nos.OS No.1569/2023 AIU B, OS No.1570/2023
AIU B, OS.No.1571/2023 AIU B dated 30.12.2023.

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For Petitioner : Mr.A.Simiyon Raja

For Respondents : Mr.M.Santhanaraman,
Senior Standing counsel

ORDER

This writ petition has been filed to direct the respondents to release the gold ornaments inappropriately seized by the respondents vide Seizure/Detention file Nos.OS No.1569/2023 AIU B, OS No.1570/2023 AIU B, OS.No.1571/2023 AIU B dated 30.12.2023.

2. The learned counsel for the petitioner would submit that the petitioner is a citizen of SriLanka and had come down to Chennai and She got married to one Jeyakanth, who is also a Srilankan citizen and their marriage was solemnized at the SRO, Madurandhagam, Chengalpet District on 15.07.2023. Thereafter, the petitioner's husband left for France, where he is living currently and the petitioner left for SriLanka with her parents to await till she get spouse sponsor visa. She



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got her visa in the month of November 2023. Thereafter, once again, she travelled to India and landed at Chennai International Airport on 30.12.2023 at 03.30 pm along with her mother-in-law and sister-in-law with her children. As her husband had also come from France on 27.12.2023, to accompany her to France, they planned for pilgrimage too, to visit the various temples in Tamil Nadu, as it is our custom and tradition since she is newly married and yet to start her life in abroad during our visit in Tamil Nadu.

3. Further, he would submit that the petitioner along with her in-laws and 3 children, had landed at Chennai on 30.12.2023 at 03.30 pm and cleared the immigration formalities. The details of them are as follows:

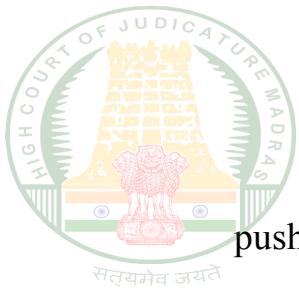
<i>S.No</i>	<i>Name</i>	<i>Age</i>	<i>Relation to petitioner</i>
1	Thanushika	30	Petitioner
2	Arasi Inbamathi	60	Mother-in-law
3	Kirushalini	39	Sister-in-law
4	Abilin Reegan	8	Children of Sister-in-law
5	Akshara Reegan	6	
6	Arush Reegan	4	



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4. While passing the customs, the customs officer/2nd respondent herein had checked their belongings and questioned about her gold bangles weighing about 45 grams and Thaalikodi weighing about 88 grams. When the enquiry was conducted, she replied that she had got married and going to France after their planned pilgrimage in Tamil Nadu and she has also showed the return ticket to France to the officials.

5. However, the customs officer did not accepted her statements and started to treat the petitioner, her in-laws and the 3 children in an arrogant manner and ordered the petitioner to remove her Thaalikodi and hand over the same to the 2nd respondent. However, she refused and begged the 2nd respondent not to remove her Thaali since it is a sentimental ornament being a symbol and token of marriage. In spite of her request, the 2nd respondent-S.Mythili along with her subordinates had forced the petitioner and snatched her Mangalya Thalikodi from her neck. Seeing the formidable behavior of the 2nd respondent, her in-laws had also begged the officer not to do so. But they were man-handled and



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pushed on the floor. The 3 children started screaming and shivering with fear and at one point of time, her mother-in-law had fainted and fell down on the floor.

6. Without bothering about anything, the 2nd respondent forced the petitioner and her in-laws to sign on some typed papers, in which it has been mentioned that the ornaments seized from them are not sentimental but smuggled things. However, the petitioner and her in-laws did not agree for their unfair demand and keep begging them repeatedly. Thereafter, they were not at all provided or permitted any food or even water and they had been kept in a locked room. By 10.00 pm, the customs officer told that their jewels would be returned when they go back from India and with no other option, they agreed to sign the papers. The 2nd respondent did not allowed them to read the paper even after signing it. Thereafter, the petitioner had begged to allow them to exit, but the duty officer told that the 2nd respondent, who handled this matter had left for home and without her knowledge they could not be allowed to exit.



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7. When the condition of the petitioner, her in-laws and the children became deteriorated, the then duty customs officer allowed them to leave the Airport on the next day at 03.30 am in the early morning after the 12 hours of detention without mercy. However, in the Mahazar, the said 2nd respondent has fraudulently mentioned that the petitioner along with her family members were allowed to exit the Airport at 08.30 pm on the very same day, which counts only 5 hours of detention.

8. In spite of expressing the petitioner's genuineness and the purpose of coming to India, the respondents had neglected and refused to return their jewels. Since the petitioner has to live with her husband, if the jewels are not returned to her, her life will be in distress as the jewels are her thaali and shridanam, which are connected with the sentiments, tradition and culture.



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9. Further, he would submit that the jewels, which are their personal property, are not subject to any irregularities and the same is not in violation of any law. The petitioner is also ready to undertake and expressed her willingness to abide by any condition laid down by the respondents. The details of the jewels are as follows:

<i>S.No</i>	<i>Name of the person</i>	<i>Age of the person</i>	<i>Relation to petitioner</i>	<i>Grams of gold detained from them</i>	<i>Grams of gold as recorded by the respondent</i>
1	Thanushika	30	Petitioner	140	166
2	Arasi Inbamathi	60	Mother-in-law	80	78
3	Kirushalini	39	Sister-in-law	44	44
4	Abilin Reegan	8	Children of Sister-in-law	24 (8 grams each)	Nil
5	Akshara Reegan	6			
6	Arush Reegan	4			
Total				288	

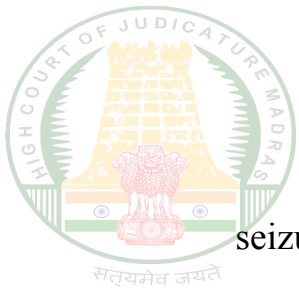
10. He would contend that though the respondents had referred the Baggage Rules, 2016, in their counter, the provisions of the said Baggage Rules will not apply in the present case. In this regard, he referred the provisions of Section 79 of the Customs Act, 1962 and submit that the Baggage Rules, 2016, is beyond the scope of said Section 79 of the Customs Act, 1962.



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11. Further, he would submit that in the present case, the allegations of the petitioner has not been specifically denied by the respondents in their counter. Normally, the averments in the affidavit, which were not specifically denied, are deemed to be admitted by the respondents. In such case, it is crystal clear that the Mahazar was prepared by the respondents on their own and hence, they had forced the petitioner to sign the Mahazar without even allowing them to go through it. Based on the said Mahazar, the confiscation order has been passed by the concerned Officers without analysing the real facts of the cooked up case against the petitioner.

12. The counter filed by the respondents varies from the confiscation order on the aspect of the manner, as to how the gold was carried by the petitioner. Further, before passing the confiscation order, no show cause notice has been provided and no opportunity of personal hearing was given to the petitioner, which is purely violation of principles of natural justice. Therefore, he would contend that the entire



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seizure and confiscation proceedings, are illegal and the same is liable to be quashed.

13. Further, by referring Rule 3 of the Baggage Rules, 1962, 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.

14. Per contra, the learned Senior Standing counsel appearing for the respondents would submit that the petitioner herein was intercepted by the Officers of the 2nd respondent on 30.12.2023. Upon enquiry, it was found that she was possessing gold jewellery, which is non-bonafide baggage for a foreign national and personal search was conducted.

15. During the personal search, she was found wearing two gold bangles and three gold chains of 22K purity, collectively weighing 166 grams. The said jeweleries were handed over by the petitioner for



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examination and quantification, whereby it was examined by a Government-approved Approver. Subsequently, the said jewellery being a non-bonafide baggage and the petitioner being a foreign national, was ineligible to bring gold jewellery into India either in her person or in her baggage, the same was seized under Section 110 of the Customs Act, 1962.

16. In a similar manner seizures of gold jewellery totally weighing 78 grams was effected from the possession of the petitioner's mother-in-law and gold jewellery totally weighing about 44 grams from the possession of petitioner's sister-in-law under separate Mahazar proceedings conducted on 30.12.2023. All the Mahazar proceedings were conducted in a peaceful manner without causing any inconvenience to the petitioner herein and by following due course of law. The sentiments of the petitioner herein were not hurt and the petitioner was explained the provisions of the Baggage Rules, 2016 as amended. Thereafter, the petitioner was made to understand that being a foreign national she was ineligible to carry gold either in her person or in her baggage and the same are liable for confiscation.



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17. During the personal search, the petitioners were politely requested to remove their jewellery and hand it over to the customs officer/2nd respondent. These proceedings were conducted with utmost respect and due regards to the sentiments of the petitioner herein and her family/relative, ensuring no harm was caused to any individual and the entire proceedings were conducted smoothly in a cordial atmosphere and also the petitioner along with her relatives were offered food, which they declined to have.

18. Further, he referred the Baggage Rule since the baggage carried by the petitioner is non-bonafide and she is not permitted to carry the gold either in person or in baggage as per the Baggage Rules, 2016, the proceedings were initiated against the petitioner and when they tried to pass through green channel with an intention to smuggle, they were stopped and further actions were taken. Under these circumstances, the petitioner has to prove before the Adjudicating Authority as to how her jewels are not liable for confiscation, which requires appreciation of evidence especially as to why the petitioner did not declare the jewels



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with the Authorities and as admitted by her in the statement recorded under Section 108 of the Customs Act, 1962, if she brought it for monetary consideration.

19. Further, he 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” and requests this Court to dismiss the present petition.

20. 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

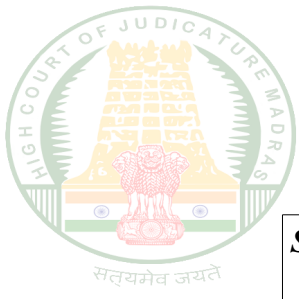


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with regard to the inclusion of the word “carried on the person” in the Baggage Rules, 2016. Therefore, he would submit that when a person worn the jewelery, it would not be considered as baggage, thus, the Baggage Rule will not apply since the same is beyond the scope of the Act. Hence, he would submit that the detaining of jewellery under the said Rule is contrary to the provisions of the Act and requests this Court to release the gold, which were seized by the 2nd respondent.

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 is a citizen of SriLanka, who travelled to Chennai on 30.12.2023 at 3.30 pm. When the search was conducted, it was found by the respondents that the petitioner and her family members have wearing jewels, which exceeds the limit prescribed in the Baggage Rules, 2016. The details of the jewels are as follows:



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<i>S.No</i>	<i>Name of the person</i>	<i>Age of the person</i>	<i>Relation to petitioner</i>	<i>Grams of gold detained from the petitioner</i>	<i>Grams of gold as recorded by the respondent</i>
1	Thanushika	30	Petitioner	140	166
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5	Akshara Reegan	6			
6	Arush Reegan	4			
Total				288	288

23. At the time of search, the respondents had seized the “thaalikodi” of the petitioner without even considering its sentiments. According to the petitioner, it was forcefully removed. The said “thaalikodi” is about 11 soverigns i.e., 88 grams. As per our customs, normally people used to wear “thaalikodi” up to 16 sovereign, in such case, it would be normal for any middle class family to wear “thaalikodi” weighing around 11 sovereigns.

24. It was also found by the respondents that the petitioner was wearing gold bangles weighing 45 grams. As per our customs, it is normal for a newly married person to wear the aforesaid quantity of



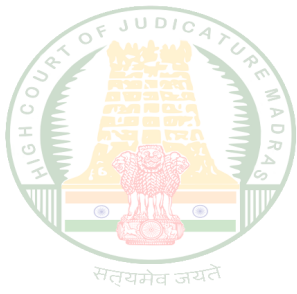
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gold. When the officers are conducting search, they have to respect the customs of every religion of this Country.

24.1 In such case, it is very unfair on the part of the 2nd respondent to remove the “thaalikodi” from the petitioner, who is yet to start her marriage life with her husband at France in the last week of January, 2024.

24.2 Without understanding the importance of “thaalikodi” (mangalsutra), the 2nd respondent had asked the petitioner to remove the same and since she refused to remove it, the Officials of the 2nd respondent had snatched it from her neck. The act of the 2nd respondent amounts to annihilate the customs of Hindu religion and the culture of this Country. At any cost, the said act of the 2nd respondent is intolerable. Thus, this Court feels that the importance of “thaalikodi” (mangalsutra) in the Hindu Customs requires to be highlighted hereunder:

a) The “thaalikodi” holds deep cultural and traditional significance in Indian society. Rooted in the customs of Hindu



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marriage, it symbolizes the marital bond between a husband and wife and represents fidelity, prosperity, and well-being.

b) The “thaalikodi” is a sacred thread tied around the bride's neck during the marriage ceremony. It signifies auspiciousness and the sacred bond of marriage. The “thaalikodi” is considered as a visual and spiritual representation of the marital vows and the lifelong commitment between the couple.

c) For every women, the “thaalikodi” is not merely a piece of jewelry but an emotional and spiritual emblem of their marital bond. It represents love, trust, and mutual respect between spouses. The act of tying the “thaalikodi” during the wedding ceremony is often accompanied by prayers and blessings, making it a profoundly emotional moment for the couple and their families.

d) Religious texts and practices highlight the “thaalikodi” as an integral part of the *solah shringar* (sixteen adornments) of a married woman, reinforcing its role as a symbol of auspiciousness and spiritual connection.



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e) The amount of gold used in a “thaalikodi” varies significantly based on cultural practices, personal preferences, and regional traditions. In South India, the gold content in the “thaalikodi” often ranges from 4 to 128 grams or more. The size and weight depend on the family’s traditions and financial capacity.

24.3 In the present case, the 2nd respondent, being well aware of the sentiments of “thaalikodi”, had asked the petitioner to remove the same. In this case, the petitioner worn “thaalikodi” weighing 88 grams, which is a reasonable weight that everyone wear. Further, it appears that the name of the petitioner's husband was inscribed in the “thaali”. However, the 2nd respondent was unable to find out the difference between the reasonable weight and suspicious weight. Even if there is any suspicion, the 2nd respondent should have asked the petitioner to show the “Thaalikodi”, instead of removing it. Thus, the act of the 2nd respondent makes it clear that there is an ulterior motive to distract the attention of other officials for the benefit of someone else. The said behaviour of the 2nd respondent is unbecoming as an officer.

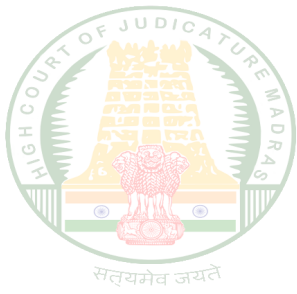


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24.4 Wearing “thaalikodi” is culture of this country and asking a passenger to remove it, or forcefully snatching it from them, would certainly amount to annihilate the culture and at any cost, such act cannot be tolerated. Therefore, such irresponsible and rude behaviour of the 2nd respondent is clearly unbecoming as an officer and the same requires appropriate enquiry and action.

25. Further, in the present case, though they have stated that the proceedings were conducted in the respectful manner, there is no specific denial from the respondents for the averments made by the petitioner in their affidavit. It is a well settled law that when the averments in the petition were not denied specifically, it would amount to deemed to be admitted on the part of the respondent. In the present case, the following averments were not denied specifically by the respondent in his counter dated 28.03.2024:

a) When the Customs officers checked the petitioner's belongings, she was wearing thaalikodi about 88 grams and gold bangles about 45 grams, she said that she just got married and came down to India for pilgrimage



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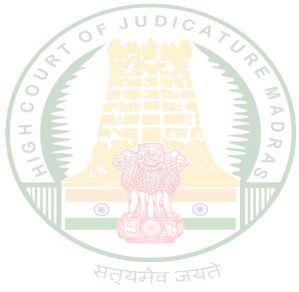
in Tamil nadu and return back in the end of January 2024. however, the respondent behave in arrogant manne in front of the petitioner's in-laws and three children. The 2nd respondent/Mythili ordered to remove the thaalikodi and hand over the same to her;

b) The petitioner refused and begged the officials not to remove my “Thaali” since it is a sentimental and considered as sacred ornament being a symbol and token of marriage.

c) The custom officials along with their subordinates forced 2nd petitioner and snatched her “Mangalya Thali kodi” from her neck. The petitioner's in-laws also begged the officer not to do so, but they were man-handled and pushed on the floor.

d) The 3 children started screaming and shivering with fear and myself at one point of time fainted and fell down on the floor and a doctor from Airport Authority treated the mother-in-law of the petitioner and advised the officials to immediately take me to Hospital.

e) However, the Officials did not bother, but forced the petitioner and her in-laws to sign on some typed papers, in which it had been mentioned that the ornaments seized from us are not sentimental, but smuggled things.



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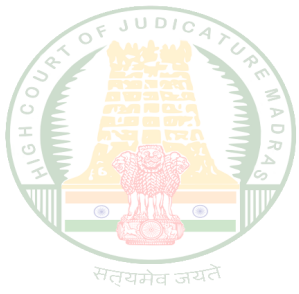
f) The said customs officer told that our jewels would be returned when we go back from India, having no other way, but listening the said officer, they agreed to sign the papers, moreover the 2nd respondent not even allowed us to read the paper.

g) Seeing the conditions of the children, the petitioner begged, to allow us to exit, but the duty officer told that the officials who handled this matter had left to home and without her knowledge, they could not be allowed to exit.

h) The then duty customs officer only allowed the petitioner and her in-laws and children to leave the Airport on the next day at 03.30 am. In the early morning, after 12 hours detention without mercy.

i) In the Mahazar, the said officials has fraudulently mentioned that the petitioner and her in-laws were allowed to exit the Airport at 08.30 pm on the very same day itself.

j) The petitioner had expressed that she has to live with her husband and if the jewels are not returned to her, her life will be in distress till the end of her life as the jewels are her “thaali and shridhanam”, which are connected with the sentiment, tradition and culture.



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26. All the above averments, which are made against the respondent, have not been denied by the respondents in their counter dated 28.03.2024 except general and bald denial of the averments in the writ affidavit. There was no specific denial to the above averments made against the respondents. It is a settled law that if the allegations raised against the respondents have not been specifically denied by them in their counter, it will be deemed to be admitted.

27. The term “Counter Affidavit” by its nomenclature describes that it is a counter to the affidavit filed in support of the writ petition. It denies the averments contained in the affidavit and at times there may be concessions in the counter affidavit too. When specific allegations are raised in the affidavit, they have to be specifically denied or refuted in the counter affidavit. Mere bald denial or the catch phrase “All allegations are denied in entirety except those specifically admitted herein”/ “At the outset deny all the allegations and averments contained in the affidavits filed in support of the above writ petition save those that are specifically admitted hereunder”, would not absolve the deponent of



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the counter affidavit. When an affidavit contains a positive averment of facts or other details, the counter affidavit should explain as to why such a fact or detail pleaded in the affidavit ought not to be accepted.

28. It is apposite to point out that the Writ Rules, 2021 were made by the High Court of Madras which was published in the Gazette on 08.09.2021. Rule 6 of the Writ Rules deals with Affidavits. Rule 6 states that:

“6. Affidavits in support of Petitions

(1) Every Petition shall be supported by an affidavit.

(2) The affidavit shall bear the cause title of the Petition and set forth

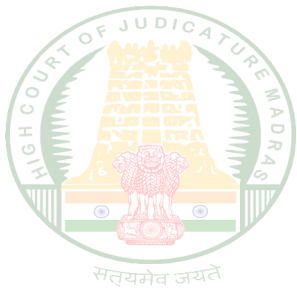
(a) facts leading to the filing of the Petition;

(b) facts giving jurisdiction to the High Court to entertain the Petition;

(c) the grounds, in case of a Writ Petition; and

(d) the interim relief, final relief.

(3) The interim relief and final relief, as far as possible, shall be in the penultimate and the last paragraphs respectively of the common affidavit.



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(4) The affidavit shall be drawn up in the first person and be divided into paragraphs numbered consecutively.

(5) The deponent of an affidavit shall be identified clearly with full name, parent's/spouse's name, age, profession or trade and the official or the residential address.

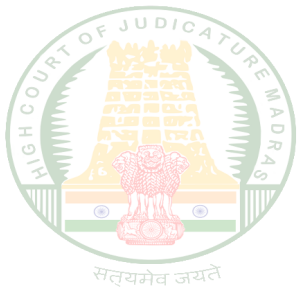
(6) The affidavit shall clearly mention whether the statements made therein are based on personal knowledge, information or belief. Where a statement is based on oral information, the affidavit shall disclose the source of such information and where the information is based on records, the affidavit shall give sufficient particulars of such records."

29. Rule 24 of the Writ Rules deal with Counter Affidavits and the same reads as follows:

"24. Counter affidavit

(1) Provisions of these Rules applicable to affidavits shall apply mutatis mutandis to counter affidavits, reply affidavits and other affidavits.

(2) Any respondent who intends to file a counter affidavit, shall, unless otherwise ordered, file it within



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eight weeks from the date of service on him of the notice or rule nisi provided the Court may extend the time or condone the delay for sufficient cause.

(3) A counter affidavit and the documents in support of a counter affidavit shall be filed together as a paper book with consecutively numbered pages by each Respondent.

(4) Where a party files affidavits or documents at different stages or times, the pages of such affidavits or documents shall be numbered in continuation of the paper book, if any, previously filed by such party.”

30. A mere reading of Rule 24(1) would make it clear that the rules applicable to affidavits as mentioned in Rule 6 shall apply mutatis mutandis to counter affidavits, reply affidavits and other affidavits.

Therefore, Rule 6(2) mandates that the affidavit should set forth

- (a) facts leading to the filing of the Petition;
- (b) facts giving jurisdiction to the High Court to entertain the Petition;
- (c) the grounds, in case of a Writ Petition; and
- (d) the interim relief, final relief, it is obligatory on part of the deponent of the counter affidavit to specifically deny the averments raised.

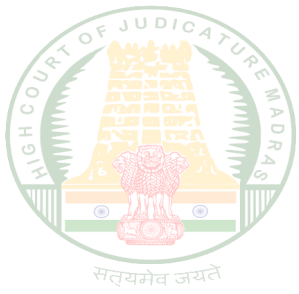


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31. When several allegations, against the 2nd respondent/Mythili and her subordinates, have been raised in the affidavit of the petition and the counter affidavit did not contain anything to specifically deny allegation/averments, which were made against the respondents except the general and bald denial, then it leads to the conclusion that the respondent or the deponent has not successfully denied the allegation. What applies to a deponent of an affidavit as per the rules applies to a deponent of the counter affidavit too.

32. In terms of Section 58 of the Evidence Act, 1872, if there is no specific denial of averments or allegations raised against any party, the same shall be considered as deemed to be admitted. Further, in the case of ***Chanchal Kumar Patra vs. The State of West Bengal and others***, (W.P.No.19779 of 2014), vide order dated 20.09.2016, the Hon'ble Calcutta High Court has held as follows:

32. Apart from justice not having been seen to be done, and there being a real danger of bias affecting the fairness of the selection process, the versions of Abdul



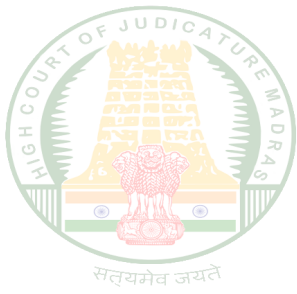
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and Binoy in their respective counter affidavits do not at all inspire confidence. Evasive denials are no denials and the allegations levelled against Abdul and Binoy must be deemed to have been accepted by them.”

33. From a reading of above, it is clear that since the respondents have not denied any of the averments raised by the petitioner, thus, no doubt, it is proved that the entire proceedings were conducted in disrespectful manner and the 2nd respondent-Officer/S.Mythilli and her associates have removed the “thaalikodi” from the neck of the petitioner, when she refused to remove the same. Further, the Mahazar was prepared with false averments as if the goods were smuggled and got in the sleeves of the petitioner, which is contrary to the above admitted facts.

34. Further, the counter filed by the respondents varies from the confiscation order on the aspect of the manner, as to how the jewellery was carried by the petitioner. In the confiscation proceedings, it has been recorded as follows:



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i) At paragraph No.1 of the confiscation order dated 24.04.2024, it has been stated that “upon search of her person, 2 yellow coloured metal bangles and 3 yellow coloured metal chains were found worn on her hand concealed in her full sleeves also found worn.”

ii) At paragraph No.3 of the confiscation order, it has been stated that “during the search of her baggage, nothing was found. Thereafter, upon search of her person, 3 nos of yellow coloured metal chains and 2 nos of yellow colour metal bangles were found from her sleeves of shirt and the same was recovered.”

iii) At paragraph No.11 of the confiscation order, it has been stated that “I find that the passenger had not declared the possession of gold in spite of repeated enquiry and only after search of her person, 3 nos. of gold chains and 2 nos. of gold bangles was recovered from under her clothes.”

35. The above 3 statements, which were recorded in the confiscation order, shows three different version, i.e., in the 1st place, it has been stated that the jewels were worn on her concealed in her full



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sleeves, in the 2nd place, it has been stated that metal bangles were found from her sleeves and in the 3rd place, it has been stated that the jewellery were recovered from under her sleeves. However, contrary to the above statements, at paragraph No.3(ii) of the counter, it has been stated as follows:

“3) ii.During the personal search, she was found wearing two gold bangles and three gold chains of 22K purity, collectively weighing 166 grams.”

36. The real fact is that 2 gold bangles and one Thaalikodi were worn by the petitioner at the time of arrival. But the same not been stated in the confiscation notice, which was issued based on the falsely created Mahazar, wherein it was stated as if the jewels were concealed under the sleeves and brought illegally by the petitioner.

37. Therefore, the truth has come out in the form of counter, whereas falsification of the records, such as preparation of the Mahazar, stands confirmed by virtue of reflecting the false informations in the confiscation orders. Based on their own statement, they had clearly



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proved that the Mahazar was prepared with false information, in order to fix the petitioner into the case for ulterior motive for the reasons better known to them. In such view of the matter, this Court suspects that the 2nd respondent/Mythilli and her subordinates have orchestrated this entire episode in order to divert the attention of the Officials for the benefit of somebody else and hence, the Authorities should examine and take appropriate actions against the erring officials on the said aspect.

38. Therefore, as stated in the averments of the petitioner, the case was foisted against the petitioner as if they have smuggled and they were forced to sign the Mahazar even without reading it. Since those averments were not specifically denied by the respondents, the same would amount to deemed to be admitted by them.

39. Further, it appears that the petitioner has also given a letter dated 22.01.2024 to the Joint Commissioner of Customs, narrating the entire facts and requested for release of goods, however, the same was not considered. In the said letter, it has clearly been stated that in the



“Thaalikodi” (mangalsutra), the name of the petitioner's husband (Jayakanth) has been inscribed.

40. Apart from the illegalities, such as, detaining the petitioner and her relatives, seizure of gold from them and preparation of Mahazar with false information, it is also necessary to deal with the aspect of jurisdiction of the Officers to frame charges against the petitioners based on the Baggage Rules, 2016. 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”*.

41 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

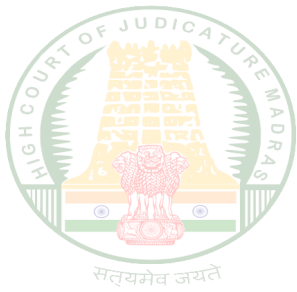


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that the definition of “Baggage” under the Customs Act, 1962, and the Baggage Rules would appear to suggest that the definition of “Baggage” for the purpose of Baggage Rules, 2016 is wider than the definition of “Baggage” under Section 2(3) of the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

42. 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.



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43. 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.

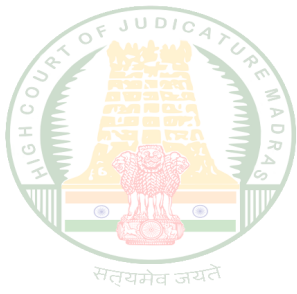
44 At this juncture, it would be apposite to extract Section 79 of the Customs Act, 1962, which reads as follows:

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



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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-

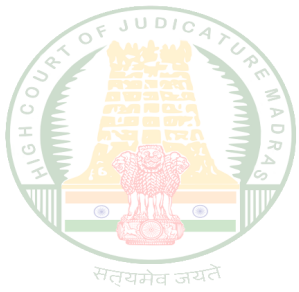
(a) the minimum period for which any article has been used by a passenger or a member of the crew for the purpose of clause (a) of sub-section (1);

(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.

45. 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.



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46. 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.

47. 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



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baggage under the Act, which reads as follows:

Section 2(3) of the Customs Act:

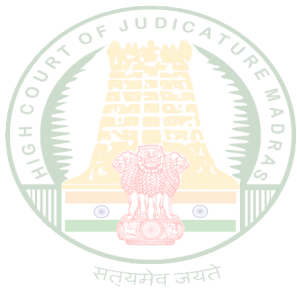
(3) "baggage" includes unaccompanied baggage but does not include motor vehicles;

48. 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



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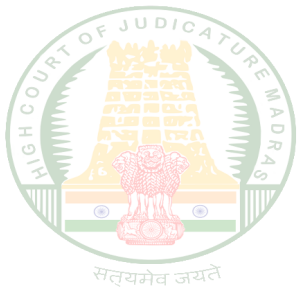
an infant, shall be allowed clearance free of duty articles in his bona fide Baggage, that is to say, (a) used personal effects and travel souvenirs; and (b) articles other than those mentioned in Annexure- I, upto the value of fifteen thousand rupees if these are carried on the person or in the accompanied 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; ”

49. 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:



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"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:

50. 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

51. The Customs Act, 1962, enables the Central Government to make Rules to the extent of the articles carried in the baggage of a



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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.

52. 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.

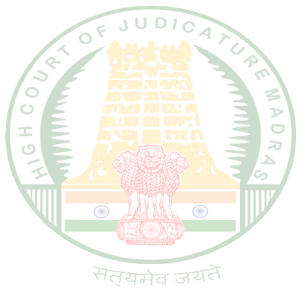
53. On the other hand, if anyone worn any unreasonable amount of



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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.

54. 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 proprietary 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.



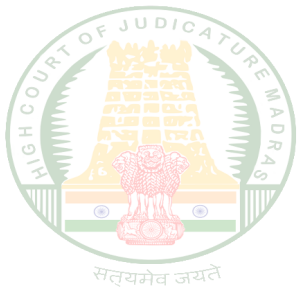
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55. The Doctrine of ultra vires states that the Rule making body must function within the purview of the Rule making authority conferred on it by the parent Act. As the body of making rules or regulations, there is no inherent power of its own to make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

56. 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.

57. 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;



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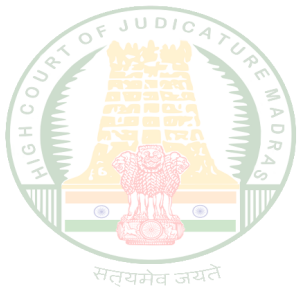
c) there may be non-compliance with the procedural requirement as laid down in the parent Act.

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.

58. 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”.

59. 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



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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."

60. Further, in the judgment of the Hon'ble Apex Court rendered in

State of Jammu and Kashmir vs. Lakhwinder Kumar and others



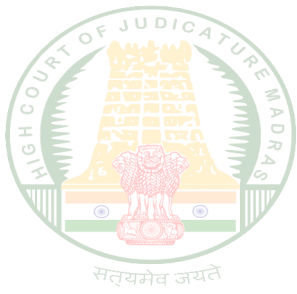
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reported in **(2013) 6 SCC 333**, it has been held as follows:

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.*

61. 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 subordinate 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*



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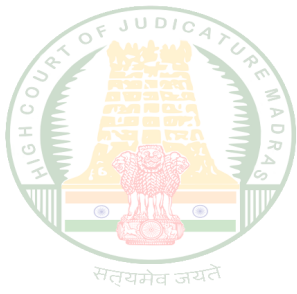


*then decide whether the subordinate Legislation conforms to the parent Statute. Where a Rule is directly inconsistent with a mandatory provision of the Statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non- conformity of the Rule 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]



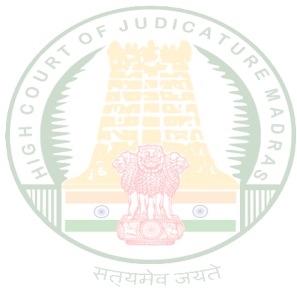
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18. In Supreme Court *Employees Welfare Association vs. Union of India* [1989 (4) SCC 187], this Court held that the validity of a sub-ordinate legislation is open to question if it is ultra vires the Constitution or the governing Act or repugnant 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



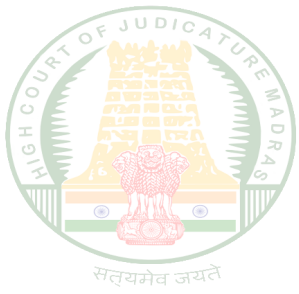
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to the purposes of the enabling legislation". See Leila Mourning v. Family Publications Service [411 US 356]. If they are manifestly unjust or oppressive or outrageous or directed to an unauthorized end or do not tend in some degree to the accomplishment 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



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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]

62. 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 jewelery worn in person will not come under the purview of baggage.

63. 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



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proceedings shall be initiated under Section 101 of the Customs Act, 1962, however, that is not the present case, except to the extent of false charges framed by the 2nd respondent against the petitioner.

64. Further, in this case, no show cause notice was issued prior to the passing of confiscation order, however it was mentioned in the order that receipt of show cause notice was waived. As this Court has already held that the entire Mahazar was prepared with false information in order to foist case against the petitioner for the reason better known to the 2nd respondent/Mythili and based on this false information available in the Mahazar, the confiscation order was passed, this Court is unable to believe the statement, which was recorded in the confiscation order that the petitioner has waived the show cause notice.

65. That apart, it was stated that though 3 opportunities of personal hearing were provided to the petitioner on 04.04.2024, 08.04.2024 and 12.04.2024, no one has appeared before the respondents and under these circumstances, the confiscation order came to be passed



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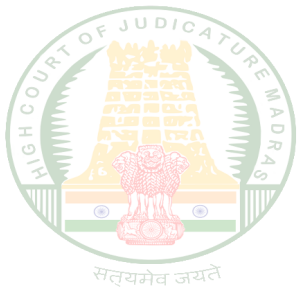
on 24.04.2024. However, this Court is of the view that since the petitioner is a SriLankan citizen, the shorter time provided by the respondent is not sufficient. In such case, it is clear that the confiscation order was passed purely in violation of principles of natural justice and hence, the same is liable to be quashed.

66. Therefore, the confiscation order dated 24.04.2024 is hereby quashed for the following reasons:

i) The confiscation order was passed without issuing the show cause notice;

ii) No proper opportunity of personal hearing was provided to the petitioner prior to the passing of confiscation order;

iii) Since the Mahazar was prepared with false information to foist a false case against the petitioner, the confiscation order was also passed, as an ex parte order, based on the false information available in the said Mahazar.



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iv) The manner, in which the jewellery was brought by the petitioner, as stated in the Mahazar is that it was brought under the sleeve, however, in the affidavit and counter, it was clearly stated that the petitioner worn the jewellery at the time of arrival. Due to the said contradiction of the respondents, it is clear that there was a change in the stand of the respondents with regard to the manner, in which the gold was carried by the petitioner, from proceedings to proceedings.

v) As per the counter, in this case, the seizure was made due to the violation of Baggage Rules, 2016. However, this Court found that the question of violation of the Baggage Rules, 2016, would not arise since the Baggage Rule contains a provision as “carried on the person”, which this Court declared that the said provision in the Baggage Rule is ultra vires the provisions of Section 79 of the Customs Act, 1962.

67. For all the above reasons, this Court is inclined to allow this

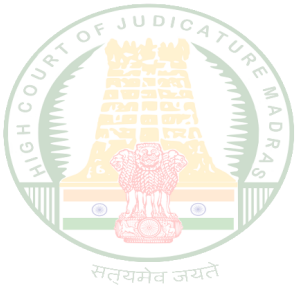


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writ petition. Accordingly, this writ petition is allowed and the confiscation order dated 24.04.2024 is quashed. The respondents are directed to release the goods of the petitioner within a period of 7 days from the date of receipt of copy of this order. No costs.

68. Further, the Principal Chief Commissioner of Customs (Tamil Nadu & Puducherry), is directed to conduct the enquiry against the Officials, who are involved in the entire episode and take appropriate action in accordance with law and thereafter file a report before this Court within a period of 3 months from the date of receipt of copy of this order.

69. As far as the 2nd respondent/S.Mythili, Seizing Officer is concerned, as discussed above, since her conduct is unbecoming as an Officer, she has to be necessarily enquired and appropriate action has to be taken against her by the Department of Personnel & Training (IRS-Customs). Hence, this matter is referred to the Department of Personnel & Training (IRS-Customs).



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31.01.2025

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

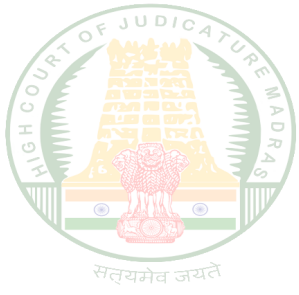
1.The Principal Commissioner of Customs (Chennai),
Represented by Seizing Agency AIU,
O/o. The Principal Commissioner of Customs,
New Custom House, Meenambakkam,
Chennai 600 027.

2.The Principal Commissioner of Customs (Chennai),
Representated by Seizing Officer S.Mythili,
O/o. The Principal Commissioner of Customs,
New Custom House, Meenambakkam,
Chennai 600 027.

Copy to

1.Principal Chief Commissioner of Customs (Tamil Nadu & Puducherry),
GST Bhawan,
No.26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034

2.The Secretary,
Department of Personnel & Training (IRS-Customs),
North Block, Central Secretariat,
New Delhi, Delhi 110001.



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W.P.No.5005 of 2024

KRISHNAN RAMASAMY.J.,

nsa

W.P.No.5005 of 2024

31.01.2025