

(1995) 05 P&H CK 0017

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 4876/81

Mangat Ram Om Prakash

APPELLANT

Vs

ACCE and Others

RESPONDENT

Date of Decision: May 24, 1995**Acts Referred:**

- Gold (Control) Act, 1968 - Section 71

Citation: (1997) 68 ECR 583**Hon'ble Judges:** T.H.B. Chalapathi, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

@JUDGMENTTAG-ORDER

T.H.B. Chalapathi, J.

This writ petition is filed to quash the orders Annexures P-3, P-5 and P-7 passed by the respondents.

2. The petitioner's premises at Bhiwani were searched by the preventive staff of Central Excise, Rohtak on April 30, 1976 and as a result of the said search 40 grams of old and new ornaments and scrap of gold were recovered from the premises. Thereafter, a show cause notice was issued by the Assistant Collector of Central Excise, Rohtak, calling upon the petitioner to show cause as to why the seized gold ornaments and scrap should not be confiscated u/s 71 of the Gold Control Act, 1968 (for short the "Act"). To the said notice, the petitioner submitted a reply. The Assistant Collector by his order dated April 5, 1976 (Ann. P. 3) confiscated the gold ornaments and also imposed penalty of Rs. 1,000/- on the petitioner. The petitioner preferred an appeal to the Collector, Customs and Central Excise, Chandigarh who by his order dated March 27, 1978 (App. P. 5) dismissed the appeal. The revision petition filed u/s 82 of the Act before the Secretary to the Government of India, Ministry of Revenue, New Delhi, was also dismissed vide Ann. P. 7. Aggrieved by the

said orders, the petitioner preferred the above writ petition to quash the orders of confiscation and imposition of penalty on the petitioner. Heard the learned Counsel for the petitioner. No body appeared for the respondents.

3. There is no dispute of the fact that 40 grams of old and new ornaments had been recovered from the premises of the petitioner. There is no material on record to show that the petitioner was dealing in gold ornaments or gold. Out of 40 grams of gold recovered from the petitioner, only 21 grams of gold consists of new ornaments and 19 grams of gold consisted of other ornaments. There were some broken pieces of gold. The broken pieces of gold cannot be said to be gold ornaments. An individual can possess 50 grams of gold under the provisions of the Act. u/s 16 of the Act, no declaration is required to be furnished by a person if he possesses less than 50 - grams of gold. In the instant case, admittedly the petitioner was having less than 50 grams of gold. u/s 56 of the Gold Control Act a Gold Control Officer has got the power to seize. Search gold in respect of which any provision of the Act has been contravened. None of the Courts below has pointed out as to which provision of the Act has been contravened by the petitioner in respect of the gold seized. As already said, there is provision in the Act that an individual can possess 50 grams of gold. There is no material on record to show that petitioner has been dealing in or doing business in gold. Therefore, prima facie the order of confiscation and also imposing penalty cannot be allowed to stand.

4. The Writ Petition is therefore, allowed and the orders of the Assistant Collector (Ann P. 3), Collector, Customs and Central Excise, Chandigarh (Ann. P. 5) and that of the Additional Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi (Ann. P. 7) are hereby quashed and the respondents are directed to return the seized gold and also to refund the amount of penalty to the petitioner within two months from today. However, there will be no order as to costs.