

2024 (390) E.L.T. 628 (S.C.)

IN THE SUPREME COURT OF INDIA

Sanjiv Khanna and Sanjay Kumar, JJ.

ISHANT GUPTA

Versus

UNION OF INDIA

Writ Petition (Criminal) No. 378 of 2024 with SLP (Crl.) No. 12364 of 2024 (II), decided on 17-9-2024

Arrest - Gold smuggling - Interim stay - Search and seizure proceedings had been initiated at business premises of petitioners, proprietors of jewellery shops and summons had been issued to them under Sections 108 based on statement of a third person from whose possession seizure of gold weighing more than 1.5 Kg. was effected by alleging smuggling - Said person had stated that seized gold was pertained to them - Petitioners had sought stay of arrest/proceedings initiated in pursuance to such summons by challenging before High Court validity of Sections 104, 105 and 108 of Customs Act, 1962 empowering Customs officer to arrest, search premises and issue summons, respectively - High Court in impugned order had held that that since gold seized from possession of third person was allegedly smuggled and was to be considered as prohibited goods in view of decision in Bhargavraj Rameshkumar Mehta [2018 (361) E.L.T. 260 (Guj.)], alleged acts or omissions against petitioners had constituted offences relating to prohibited goods which were punishable upto seven years under Section 135(1)(b)(i)(C) *ibid* and cognizable under Section 104(4) *ibid* and therefore, provisions of Section 155 of Code of Criminal Procedure, 1973 had no application and petitioners could be arrested without warrant from Magistrate - High Court had thus declined interim protection/grant of stay against summons to petitioners and their arrest by Customs officer - After taking note of petitioners' plea that if Customs authorities seek to arrest them, they will comply with statutory mandate of Section 104 after considering and giving effect ratio of judgment in Arvind Kejriwal [2024 INSC 512], SLP was to be disposed of leaving all contentions and issues open for adjudication - Section 104, read with Section 108 of Customs Act, 1962 - Section 155 of Code of Criminal Procedure, 1973. *[paras 1 to 5]*

Petition dismissed/SLP disposed of in favour of Department

CASE REVIEW

Om Prakash Soni v. Union of India — (2024) 23 Centax 27 (Raj.) — **Affirmed**

CASE CITED

Arvind Kejriwal v. Directorate of Enforcement - 2024 INSC 512 — **Noted** [Para 3]

REPRESENTED BY : S/Shri Sidharth Luthra, Sr. Advocate, Yash Agarwal, Keerthikvasan, Heera Singh, B. Kamlanthan, S. Thennavan, N. Sakthivel, Ivan, Mayank Taparia,

Ayush Agarwal, Karl P. Rustomkhan, Suhail Ahmed, Advocates, Praveen Kumar Jha and Vivek Mathur, AORs, for the Petitioner.

S/Shri Zoheb Hussain, Annam Venkatesh, Vivek Gurnani, Ms. Rajeshwari Shankar, Advocates and Gurmeet Singh Makker, AOR, for the Respondent.

[Order]. - Learned Counsel for the petitioner seeks permission to withdraw the writ petition filed under Article 32 of the Constitution of India.

2. In view of the statement made, the writ petition is dismissed as withdrawn.

SLP (Crl.) No. 12364/2024

3. After arguing for some time, Learned Senior Counsel appearing for the petitioner states that he will not press the present petition but it should be clarified that if the respondent-customs authorities seek to arrest the petitioner, they shall comply with the statutory mandate of Section 104 of the Customs Act, 1962, after considering and giving effect to the principles and ratio elucidated in the judgment of this Court in *Arvind Kejriwal v. Directorate of Enforcement*, 2024 INSC 512.

4. Recording the aforesaid, the Special Leave Petition is disposed of. All contentions and issues are left open for adjudication.

5. Pending application(s), if any, shall stand disposed of.