(1990) 12 KAR CK 0025

In the Karnataka High Court

Case No : Writ Petition No''s. 6192 and 6193 of 1985

Bharat Hansraj Gandhi APPELLANT

Vs

Additional Collector of C. Ex. RESPONDENT

Date of Decision : 12-12-1990

Acts Referred:

Central Excise Rules, 1944 — Rule 4, 5
Gold (Control) Act, 1968 — Section 78 (b)

Citation : (1991) 34 ECC 143 : (1991) 55 ELT 462 : (1991) 1 KarLJ 187

Hon'ble Judges : S.R. Rajasekhara Murthy, J

Bench : Single Bench

Advocate : Shri G. Chander Kumar, for the Appellant; Shri D.V. Shylendra Kumar, C.G.S.S.C., for the Respondent

Judgement

1. In these two writ petitions the petitioners who are brothers, have challenged the order-passed by the Additional Collector of Central Excise, Belgaum dated 19-1-1985 (Annexure-A). They have also prayed for quashing the Endorsement issued by the 2nd respondent, the Collector of Central Excise (Appeals), Madras dated 13-3-1985 (Annexure G-1).

2. Annexure-A is the order passed by the Additional Collector of Central Excise exercising his power under the Gold (Control) Act, 1968.

3. Annexure-G-1 is the endorsement issued by the Collector of Central Excise (Appeals), Madras returning the appeal filed by the petitioner before him against the order of the Additional Collector of Central Excise (Annexure A).

4. The facts leading to the adjudication-order passed by the first respondent, are these :-

5. The petitioners are Silver-smiths by profession carrying on business under the name and style of M/s. Ganesh Jewellers, Kolhapur. On 9-5-1984 a taxi (fiat-car) bearing No. MTF 7558 coming from Kolhapur towards Belgaum was accosted by the officers of the Central Excise Department near Sutgatti Bridge in Belgaum

district, on reliable information that the petitioners were carrying contraband gold from Kolhapur to Belgaum. During the search and seizure that followed, three primary gold bars were recovered from the possession of the first-petitioner valued Rs. 2,79,000/- and the same was seized under Panchanama dated 9-5-1984. The residential premises of the 2nd petitioner at Kolhapur, as well as his shop-premises were also searched on 14-9-1984.

6. After completing the investigation a show cause notice was issued on 19-9-1984 to petitioners 1 and 2, and one Sheikh Javeed, the Driver of the Car. This was followed by the adjudication proceedings by the first-respondent which culminated in the order dated 19-1-1985 (Annexure ''A'').

7. Being aggrieved by the said order the petitioners preferred an appeal to the ''CEGAT'', Madras. The Tribunal returned the appeal with the endorsement that the appeal against the order of the Additional Collector in gold-control cases lies to the Collector of Central Excises (Appeals), Madras, and not to the Tribunal.

8. When the petitioners re-submitted the Memorandum of Appeal to Respondent 2, the Collector of Central Excise (Appeals), Madras, gave an endorsement on 13-3-1985 declining to entertain the appeal, as per Annexure G-1. The petitioners have sought for quashing of this endorsement also, in addition to the prayer made to quash the original order passed by the Additional Collector.

9. The only ground that is required to be considered in these cases relate to the challenge made to Annexure A, the adjudication order, on the question of jurisdiction of the Additional Collector to adjudicate under the Gold (Control) Act.

10. The contention of the petitioners is that the order of adjudication passed by respondent 1, is liable to be quashed as one made without jurisdiction. The argument in support of this contention is that the order has been made in contravention of Section 75 of the Gold (Control) Act, since the Additional Collector of Central Excise was not one of the officers authorised by the Central Government u/s 78(b) of the Gold (Control) Act.

11. In order to appreciate this contention of the petitioners, it is necessary to reproduce Section 78 of the Gold Control Act :-

"78. Adjudication. - Any confiscation may be adjudged or penalty may be imposed under this Act -

(a) without limit, by a Gold Control Officer not below the rank of a Collector of Central Excise or of Customs;

(b) subject to such limits as may be specified in this behalf, by such other Gold Control Officer not below the rank of a Superintendent of Central Excise, as the Central Government may, by notification, authorise in this behalf."

12. Under sub-clause (a), a Collector of Central Excise or a Customs Collector is empowered to make an order of confiscation or penalty under the Act.

13. Under sub-clause (b), the Central Government may, by notification, authorise such other Gold Control Officer, not below the rank of Superintendent of Central Excise, to pass an order of adjudication under the Act subject to such limits as may be specified by the Central Government. So far as the power of the Collector of Central Excise/Customs Collector is concerned, they have unlimited power under the Act as specified u/s 78(a) itself.

"Gold Control Officer", is defined u/s 2(1) to mean, a Gold Control Officer appointed u/s 4. u/s 4, Gold Control Officers are appointed by the Central Government by notification issued for the purpose of the Act. Such Gold Control Officers, may exercise such power and discharge such functions as are specified or conferred by the Central Government.

14. Notification dated 27th December, 1980, was issued u/s 78(b) of the Gold Control Act authorising, among other officer, Additional Collector of Customs indicating the limits of power.

15. By Notification No. 3/81 dated 1-8-1981, in addition to the Additional Collector of Customs, the Additional Collector of Central Excise was also included at Sl. No. 3 in the Notification dated 27-12-1980 to exercise all such powers as indicated in Column No. 3 along with Additional Collector of Customs. By a subsequent notification dated 6-6-1984 both the Additional Collector of Customs and the Additional Collector of Central Excise were omitted from the notification dated 27-12-1980. The three notifications are reproduced below :-

I. "S.O. 985(E) DATED 27TH DECEMBER 1980

In exercise of the powers conferred by clause (b) of Section 78, read with sub-section (2) of Section 116 of the Gold (Control) Act, 1968 (45 of 1968) and in supersession of all the notifications on the subject, the Central Government hereby authorises the Gold Control Officers of the rank indicated in column (2) of the Table below to exercise, subject to the limits specified in column (3) of the said Table, the powers of adjudication, confiscation and imposition of penalty conferred by the said Act.

-- Sl. No. Rank of Officer Limits of the power -- (1) (2) (3) -- 1. (a) xx xx xx xx xx (b) xx xx xx xx xx 2. (a) xx xx xx xx xx 3. Additional Collector (i) Whether the value of the gold of Customs. liable to confiscation - (whether such gold is available for confiscation or not) does not exceed Rs. 10,00,000/- (ii) Where any conveyance or animal is liable to confiscation under Section 72, but the gold for the transport of which such conveyance or animal had been used is not available for confiscation without any limit as to the value of such conveyance or animal. -- II. GOLD CONTROL - ENHANCEMENT OF POWERS (Notification No. 3/81-G.D., DTD. 1-8-1981). --

In exercise of the powers conferred by clause (b) of Section 78, read with sub-section (2) of Section 116 of the Gold (Control) Act, 1968 (45 of 1968), the Central Government hereby makes the following amendment in the Notification of the Government of India in the Ministry of Finance (Department of Revenue) No. S.O. 985(E), dated the 27th December, 1980, namely :-

In the Table of the said Notification, against Serial number 3, in Column (2) for the entry "Additional Collector of Customs", the following entries shall be substituted, namely :-

"(a)......................................

(b) ADDITIONAL COLLECTOR OF CENTRAL EXCISE".

III. Copy of Notification F. No. 2/84-F. 131/10-84-GC II DATED 6-6-1984.

S.O. No. 417(E). In exercise of the powers conferred by clause (b) of Section 78, read with sub-section (2) of Section 116 of the Gold Control Act, 1968 (45 of 1968), the Central Government hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Dept. of Revenue) No. S.O. 985(E), dated 27th December 1980, namely :-

"In the table to the said notification, serial number 3 and the entries relating thereto shall be omitted."

16. The argument of the learned Counsel for the petitioners advanced on the basis of these notifications is that the Additional Collector, who passed the Adjudication order on 19-1-1985 had no jurisdiction to make the order. If the petitioners succeed on this point, no other ground need be considered. I, therefore, do not propose to consider the other grounds urged in the writ petitions and the learned Senior Standing Counsel for the Central Government also addressed the arguments confining only to this point.

17. As can be seen from the scheme of the Gold (Control) Act, the power to adjudicate under the Act is governed by the provisions of Section 78 of the Act. u/s 78(a), both the Collector of Customs and Collector of Central Excise are vested with unlimited powers of adjudication under Gold (Control) Act. But so far as the other ''Gold Control Officers'' authorised under the Act are concerned, a notification by the Central Government in this behalf is necessary to be issued specifying the officers and their power.

18. Coming back to the notifications, in the first Notification dated 27th December, 1980, only Additional Collector of Customs had been authorised to exercise powers of adjudication, confiscation and imposition of penalty under the Gold (Control) Act subject to the limits of the power, as indicated therein.

19. By Notification dated 1-8-1981, Additional Collector of Central Excise was also authorised to exercise all powers of a Gold Control Officer as were conferred on the Additional Collector of Customs.

20. By notification dated 6-6-1984 both the Additional Collector of Customs as well as the Additional Collector of Excise were omitted from the notification, and, therefore, they ceased to exercise any or all the powers which had been conferred under Notification dated 27-12-1980.

21. In the background of these notifications it was strenuously urged on behalf of the petitioners that the order passed by the Additional Collector of Central Excise, Belgaum on 19-1-1985 is liable to be quashed on the sole ground of want of jurisdiction.

22. As against this argument, the contention of the Department as orally submitted by its Senior Standing Counsel is that even after the deletion of Additional Collector of Central Excise with effect from 6-6-1984, the order of adjudication passed by the Additional Collector must be held to have been made by a competent authority in the light of the definition of ''Collector'' in Rule 2(ii) of the Central Excise Rules.

23. The Rule is reproduced below :

"Rule 2(ii) "Collector" means -

(A) in relation to excisable goods other than salt, -

(a) in the districts of Srikakulam, etc., the Collector of Central Excise, Guntur. ....

(b) to (zg)............................

(B) and, includes an Additional Collector and any officer specifically authorised under Rule 4 or Rule 5 to exercise throughout any State or any specified area therein all or any of the powers of a Collector under these rules;..............."

24. The argument that is developed on this premise is, that the Collector of Central Excise referred to in Section 78(a), includes Additional Collector also. It is, therefore, argued that the Additional Collector, who exercises the powers of a Collector under the Central Excises Act, should be understood as a Collector for all purposes under the Gold (Control) Act also.

25. Therefore, the only point that arises for decision on the basis of these argument is :

"Whether the Additional Collector of Central Excise continued to exercise all the powers of a Gold Control Officer beyond 6-6-1984, and, if not what is its legal effect on the adjudication order passed by the Additional Collector of Central Excise, Belgaum on 19-1-1985 (Annexure A), which is impugned in these writ petitions ?"

26. I am not convinced with the argument advanced on behalf of the Central Government justifying the order made by the Additional Collector that even after he ceased to be Gold Control Officer beyond 6-6-1984, he could exercise powers under the Gold (Control) Act. The argument of the learned Counsel for the

Department has to be rejected, outright, since any power to be exercised by him must be traced to and flow from any notification issued by the Central Government, authorising him to exercise such of the powers of adjudication, confiscation and penalty under the Gold (Control) Act. No officer other than those authorised in this behalf as required u/s 78(b) of the Gold (Control) Act, can exercise the powers of an adjudicating authority. This is the scheme as envisaged in Section 78. The Collector of Central Excise and the Collector of Customs are conferred with unlimited power under the Act itself. But so far as the other Gold Control Officers are concerned, which includes an Additional Collector of Central Excise, they must be specifically notified as Gold Control Officers to exercise such powers as are authorised to be exercised.

27. The position in law that emerges from the scheme of the Act is very simple and the order of adjudication which is impugned in these writ petitions has to be tested having regard to the scheme of the Act, explained above, and the contentions of the petitioners. No elaborate, reasoning is necessary to quash the order of the Additional Collector of Central Excise, Belgaum (Annexure A), as one passed without jurisdiction. My reasons for this conclusion are these :

28. The definition of "Collector" under Rule 2(ii) of the Central Excise Rules, is meant to apply only to the exercise of powers on the specified officers of the Central Excise Department under the Central Excises Act and in relation to excisable goods. Adopting the definition of ''Collector'' under Central Excises Act, and to confer power of adjudication etc., under the Gold (Control) Act, on the Additional Collector of Central Excise is wholly misconceived.

29. u/s 78(b) of the Gold (Control) Act, express power of adjudication is required to be conferred on such of the officers as the Central Government decides to confer. By a mere reference the definition of Collector occurring in the Central Excises Act cannot be read into the Gold (Control) Act without any statutory notification to that effect. Such an interpretation is impermissible and is contrary to the principle of interpretation by reference.

30. It is not a sound principle of construction to interpret the expressions with reference to their use in another Act, when the two Acts are not in pari materia.

31. In this context, the observations made by the Supreme Court in the following cases are useful to be referred :

In Hari Khemu Gawali v. Deputy Commissioner of Police, Bombay & Anr. (1956 S.C. 559)

the Supreme Court observed that it is not safe to pronounce on the provisions of one Act with reference to decisions dealing with other Acts which may not be in pari materia.

32. In Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan and Others, , the Supreme Court had this to say in a similar situation :

"It is not a sound principle of construction to interpret expression used in one Act with reference to their use in another Act, and decisions rendered with reference to construction of one Act cannot apply with reference to the provisions of another Act, unless the two Acts are in pari materia. Further, when there is no ambiguity in the statute, it may not be permissible to refer to, for purposes of its construction, any previous legislation or decisions rendered thereon."

33. In S. Mohan Lal Vs. R. Kondiah, Sri Chinnappa Reddy J. went further and said that it is a sound, and, indeed, a well-known principle of construction that meaning of words and expression used in an Act must take their colour from the context in which they appear. (Para 3).

34. The decision of Delhi High Court in Ram Singh Manmohan Singh and Others Vs. Union of India and Others, cited by the learned Counsel for the petitioner has no bearing on the point.

35. The definition of ''Collector'' in Rule 2(ii) of the Central Excise Rules, which includes Additional Collector is only meant for purposes of Central Excises Act, and, cannot be adopted for purposes of Gold (Control) Act. Only the officers as authorised by the Central Government u/s 78(b) read with Section 116 of the Gold (Control) Act, can exercise power of adjudication, confiscation, etc. under that Act.

36. On a perusal of the various notifications referred to earlier, the Addl. Collector of Central Excise was conferred with the powers under the Gold (Control) Act with effect from 1-8-1981, in addition to and along with the Addl. Collector of Customs, whereas by notification dated 6-6-1984 Sl. No. 3 in the notification dated 27-12-1980 was omitted. Therefore, both the Addl. Collector of Customs and Additional Collector of Central Excise, who had been authorised to exercise powers under the Gold (Control) Act, ceased to exercise power under the Gold (Control) Act with effect from 6-6-1984.

37. Hence, I am not impressed with the argument of the learned Senior Standing Counsel for the Central Government as to the principles of interpretation that should govern this case. The Additional Collector of Central Excise, Belgaum, who passed the order of adjudication in this case on 19-1-1985 had no jurisdiction to exercise power of a Gold Control Officer under the Gold (Control) Act. Hence, his order has to be quashed, as one made without jurisdiction.

38. The Writ Petitions are accordingly allowed and the order passed by the Additional Collector of Central Excise, Belgaum (Annexure ''A''), is quashed.

39. As a result, the primary gold weighing 1416 Gms., seized from the 1st petitioner shall be returned to him within eight-weeks from the date of receipt of this order.

40. Since the Adjudication Order itself is quashed by me, it is unnecessary to consider the prayer No. 12(b), relating to the Endorsement issued by the Collector of Central Excise (Appeals), Madras, as per Annexure G-1.

