(1979) 11 CAL CK 0016

In the Calcutta High Court

Case No : Civil Rule No. 20175 (W) 75

Biswanath Roy and Others APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 12-11-1979

Acts Referred:
Gold (Control) Act, 1968 — Section 16, 16(1), 16(2), 6, 6(1)

Citation : (1981) 8 ELT 945

Hon'ble Judges : C.K. Banerji, J

Bench : Single Bench

Advocate : Hirendra Chandra Ghosh and Lakshmi Kumar Gupta, for the Appellant;Suchangshri Sakhareswar Roy, for the Respondent

Final Decision : Allowed

Judgement

C.K. Banerji, J.—The petitioners are pawn brokers lending money to people on hypothecation of ornaments, jewelleries and gold and silver articles. The petitioners have not received any direction u/s 6 of the Gold (Control) Act for making any declaration of gold in their possession, custody or control under the said Act. The petitioners allege that they are sought to be roped in u/s 16 of the said Act and they are made liable to make a declaration in the prescribed form as to the gold ornaments and articles in their possession, custody and control with various particulars under Form No. GS. 3 and a further declaration under Form No. GS 3A introduced by a notification No. SO 625 (E), dated 31st October, 1975. The petitioners have made the writ petition for directing the respondents not to give effect to the said notice or circular whereby the petitioners are required to make declarations under the said Act. Mr. H.N. Ghosh, learned Advocate for the petitioners contended that Section 6 of the Gold (Control) Act being a specific provisions applicable to pawn broker, the general Section 16 has no application to the petitioner. Mr. Ghosh next contended that the petitioners were merely pawn brokers holding goods against money lent and were bound to return the same as soon as money lent by them was repaid. They could not be said to be persons owning or in possession or custody or control of the ornaments or the articles which were pawned to them. Mr. Ghosh further urged that the words "possession, custody, control" in Section 16(1) of the said Act had to be read ajusden generis with the expression "own". The said expressions did not include each and every person who had possession, custody or control of the same. Mr. Ghosh argued that the possession, custody or control of the goods pawned had all along remained with the owners thereof and the petitioners as pawn brokers merely held them as bailees. Mr. Ghosh submitted that Section 16 therefore had no application to the petitioners. I am unable to accept the contentions of Mr. Ghosh. Section 16 is clear in its language, terms and import. Various categories of persons are included in the said section, namely, the owner, persons having possession, or having custody or having control of ornaments and articles made of gold or manufactured from gold. Mr. Ghosh next urged that it was impossible for the petitioners to make a declaration in terms of form No. GS 3 and also in terms of new form GS 3A. The particulars could not be given at all correctly or otherwise by the petitioners as they were not owners of the fineness of the gold in the ornaments and articles which were pawned to them nor they were aware of the weight of the gold which those ornaments and articles contained. The ornaments and articles, apart from gold contain many other things such as lac, copper, bronze, silver and other metals. Thus the declaration to be given would be, according to Mr. Ghosh, incorrect and untrue which might result \\in prosecution of the petitioners under the Act for making untrue declaration. Mr. Ghosh, however, in his usual conditions submitted that so far as the applicability of Section 16 of the Act and form GS 3 to the petitioners was concerned, the case was covered by the Supreme Court, in Badri Prasad and Others, etc. Vs. Collector of Central Excise and Others, etc., which was against him. There the Supreme Court held that Section 16 of the Act was applicable to a pawn broker and he was bound to submit a return under Form No. GS 3 and neither Section 6 (1) nor Section 16 (2) affected the said obligation to file a return. So far as filing a further declaration in form No. GS 3A is concerned, in my opinion, there is no difficulty on the part of the petitioners to make the same. The form merely requires a pawn broker to give the number of pawnees whose ornaments and articles remain unreturned and the number and weight of such ornaments and articles. That form did not require the pawn broker to give the fineness of the gold or the actual quantity of the gold but it required, in my opinion, only the gross weight of the ornaments or articles, as it is, but it mixed with any other metal or whether it contained lac or any other substance. In view of the decision of the Supreme Court in the Badri Prosad''''s case (supra) the arguments of Mr. Ghosh cannot be accepted and respectfully following the said decision of the Supreme Court, I hold that the Rule must fall and should be discharged.

2. Accordingly, the Rule is discharged. All interim orders are vacated. The petitioners will, however, be entitled to file necessary returns within two month from today and all subsequent returns in accordance with the provisions of the Gold (Control) Act, 1968. There will be no order as to costs.

