(2006) 03 AP CK 0153

In the Andhra Pradesh High Court

Case No : Case Referred No. 77 of 1995

Collector of Cus.	APPELLANT
Vs	
Sri Manchukonda Sreeramulu	RESPONDENT

Date of Decision : 09-03-2006

Acts Referred:
General Clauses Act, 1897 — Section 6, 6(1)
Gold (Control) Act, 1968 — Section 71

Citation : (2006) 202 ELT 407

Hon'ble Judges : G. Chandraiah, J;Bilal Nazki, J

Bench : Division Bench

Advocate : A. Rajasekhar Reddy, S.C. for Central Government, for the Appellant; Y. Ratnakar, for the Respondent

Judgement

Bilal Nazki, J.—Heard the learned counsel for the parties.

2. This is a reference made under the Gold (Control) Act, 1968 (for brevity ''the Act'') to answer the following question:

Whether the issue of a show cause notice would amount to commencement of proceedings within the meaning of Section 6 of the General Clauses Act, 1897 and whether service of the show cause notice prior to the date of the repeal of the Gold (Control) Act, 1968 is a legal requirement for continuance of the proceedings in terms of Section 6 of the General Clauses Act?

3. The reference has been made at the instance of the Revenue, as the Tribunal decided the matter against the Revenue on the basis of a judgment of the Supreme Court reported in Rayala Corporation (P) Ltd. and M.R. Pratap Vs. Director of Enforcement, New Delhi, .

4. Record discloses that on 24-12-1989 there was a search of the business and residential premises of the assessee and gold was seized. On 4-6-1990, a show cause notice was given according to the Revenue in terms of Section 71 of the Act, for confiscation of gold. On 6-6-1990 the Act was repealed by Gold (Control)

Repeal Act, 1990. The Gold (Control) Repeal Act, 1990 did not have saving clause. Though the notice u/s 71 was issued by the Collector on 4-6-1990, the order was not passed before 6-6-1990 when the Act was repealed. The order of fine in lieu of confiscation was passed in terms of Section 71 of the Act and in the appeal to the Tribunal, the order was set aside on the ground that the Act had been repealed and the repealed rules did not have any saving clause.

5. The learned Additional Solicitor General appearing, submitted that the judgment of the Supreme Court referred to by the Tribunal, pertained to Defence of India Rules and it has been consistently held by the Courts that in case of temporary Acts and in case of Regulations, recourse to Section 6 of the General Clauses Act cannot be taken. Where however, it is a case of repeal of an Act of Parliament, even if there is no savings clause, Section 6 of the General Clauses Act would apply. In this regard, he relied on the judgment of the Supreme Court reported in Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others, . The Constitutional Bench of the Supreme Court dealt with the effect of Section 6 of the General Clauses Act on the repeal of Central Acts or Regulations in detail and was of the view that:

37. The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions of Section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in Section 6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceedings shall not continue but fresh proceedings for the same purpose may be initiated under the new provision.

6. For these reasons, we answer the reference in favour of the Revenue and against the assessee.