
(1971) 11 KL CK 0025

In the High Court Of Kerala

Case No : Writ Appeal No. 922 of 1969

Collector of Customs and Central Excise, Cochin and Another
Vs

APPELLANT

Kesava Reddiar

RESPONDENT

Date of Decision : 10-11-1971

Acts Referred:

Gold (Control) Rules, 1963 — Rule 126C(1), 126F, 126G(1), 126H(1)

Citation : AIR 1972 Ker 120 : (1972) KLJ 544

Hon'ble Judges : T.C. Raghavan, C.J.;P. Unnikrishna Kurup, J

Bench : Division Bench

Advocate : P. Raman Menon, Central Govt. Pleader, for the Appellant; N.K. Sreedharan, for the Respondent

Final Decision : Allowed

Judgement

Raghavan, C.J.—The appellants are the Collector of Customs and Excise. Cochin and the Union of India, the respondent being the petitioner in the writ petition giving rise to the appeal, a gold dealer in Quilon. The officers of the Customs and Excise Department searched the shop of the respondent and seized several items of gold ornaments which are enumerated in Ex. P3 from an anteroom in the shop kept in packing boxes kept inside a wooden almirah: and in consequence of the said seizure, the ornaments were confiscated and in addition, the respondent was directed to pay a penalty of Rs. 1000/-. However, the respondent was allowed to redeem the ornaments on payment of Rs. 6000/-, It was against this order that the writ petition was filed; and a learned Judge of this Court allowed the writ petition and quashed Ex. P3 directing the first appellant to return the confiscated ornaments and also to refund the fine, if any, recovered from him. In appeal, the said order of the Single Judge is being challenged,

2. The several charges levelled against the respondent are enumerated in the judgment of the Single Judge; and they are that the respondent contravened Rules 126-C (1) fa) (i) and (ii), 126-D (2). 126-F (d). 126-G (1) and 126-H (1) of the Gold Control Rules, i.e., the rules prior to the Gold Control Act The learned

Judge appears to have considered all these rules excepting Rule 126-H (1): we do not find any discussion regarding Rule 126-H (1) in the judgment. And now we shall consider these charges one by one.

3. Rule 126-C (1) reads:--"Save as provided, etc.,

(a) no dealer whether licensed under this Part or not. shall-- (i) make, manufacture or prepare, or (ii) sell or otherwise transfer, agree to sell or otherwise transfer, or expose or offer for sale or transfer,"

The Central Government Pleader himself has agreed that the charge under Sub-clause (i) will not stand; and his argument is confined to the charge under Sub-clause (ii). The Single Judge has considered this question in paragraph 3 of his judgment. The learned Judge observes:--

"Possession for sale is not prohibited under the above rule. On the facts stated in Ex. P1 and found in Ex. P3, this may be a case of possession of the ornaments for sale, but it is not certainly a case of exposing or offering for sale."

This reasoning, we find difficult to accept: it is hyper technical. As we have already indicated, these pieces of ornaments were found in the ante-room in the shop of the respondent: his residence is not even attached to the shop. The ornaments were, as pointed out by the concerned officer, secreted and kept in packing boxes among packing material in a wooden almirah. The distinction sought to be drawn between offering for sale and possessing for sale is not of any consequence in a case like this, where the articles were found in the shop, which is not even attached to the residence of the dealer. The articles were, at any rate, offered for sale, though they might not have been, strictly speaking, exposed for sale. Ex. P3 shows that some of the ornaments are several pieces of the same type--as many as 24. It is clear that they were kept there for sale: then it is not possible to think that they were not Offered for sale.

4. The next charge is under Rule 126-D (2). At one stage of the proceeding, the respondent stated before the officer that these ornaments were taken as pledge, when he advanced amounts to the owners thereof. The names of the alleged owners were not disclosed; and the officer did not also believe this version. At another stage, the version was that they were received by the members of the respondent's family as presents. In view of this, it cannot be said that the respondent carried on business as money lender or banker in the same premises in which he carried on business as a dealer in gold. Therefore, we are of opinion that the charge under Rule 126-D (2) is not made out.

5. The next charge Is under. Rule 126-H (1). which reads:--

"Except in the case of any quantity of gold acquired after the date of making any return, no dealer, and no refiner, who is licensed under this Part, shall have in his possession or under his control any gold which has not been included in such return."

The ornaments seized from the premises were admittedly not included in the return submitted by the respondent. Therefore, the case will fall within this rule. In this connection, it will be interesting to note the definition of gold in Rule 126-A. Gold is defined to mean:

"Gold, including its alloy, whether virgin melted, remelted, wrought or unwrought, in any shape or form, of a purity of not less than nine carats and" includes any gold coin (whether legal tender or not), any ornament and any other article of gold".

There is no doubt that ornaments will also come within this definition, so that the possession of the concerned ornaments was possession of gold which will come under Rule 126-H (1), with the result that the charge under this rule is also established. We reiterate that the learned Judge does not appear to have considered this charge.

6. The next is the charge under Rule 126-G (1), which reads:

"Every dealer who is required to apply for a licence or is licensed, and every refiner who has made an application for a licence or is licensed under this Part shall keep an account, in such form and manner as may be prescribed of the gold bought or sold or otherwise received or disposed of by him, at each transaction". This question is considered by the Single Judge in paragraph 6 of his judgment. The learned Judge observes

"This relates only to dealers and refiners; and the use of the word "transaction" in relation to such person denotes that it applies only to things done in the course of business. What a dealer or refiner does outside the scope of his business does not come within the ambit of the above rule. There is no question of keeping an account in respect of gold which was not bought or sold or otherwise received or disposed of by him. Unless it was a business transaction. The account has to be kept in the prescribed form and manner. The obligation to keep such account cannot apply to gold clandestinely obtained by a dealer or refiner". (Underlining is ours.)

We are unable to agree with this reasoning. The expression "otherwise received" is sufficiently wide to include gold received by the dealer in whatever manner--even clandestinely and "transaction", in our opinion, will include a clandestine transaction too. The word "transact" means, in the Shorter Oxford English Dictionary, "to carry through negotiations; to have dealings, do business": a clandestine dealing or business is equally dealing or business. Therefore, the dealer was bound to have entered the receipt of this also in the account.

7. And lastly we come to the charge under Rule 126-F. This question is discussed by the learned Judge in paragraph 5 of his judgment. The learned Judge observes:--

"A period is prescribed for making these returns. There is no finding as to when the gold ornaments seized from the petitioner came to his possession, or he

failed to make any return within a prescribed period".

This reasoning also does not appeal to us. If, as we have already found, the dealer was bound to keep accounts under Rule 126-G and should have also entered the receipt of the gold ornaments in the accounts and he did so too, then whether the period during which the return had to be submitted under Rule 126-F expired or not could have easily been found out. Now that he failed to keep accounts, it has become impossible to find out whether the time for submitting return expired or not. In such a case, the onus is not on the Department to show when the respondent came by the gold: the respondent should prove that he came by the gold only within the period during which the return has to be made: in other words, he should prove that the time for filing the return has not expired. Otherwise, he is liable for the offence.

8. In view of our findings hereinbefore, we allow the appeal, set aside the order of the Single Judge and dismiss the writ petition. We also direct the respondent to pay the costs of this appeal, which we fix at Rs. 200/-.

9. Now that we have allowed the appeal, the respondent is given a month's time to pay the amount and redeem the ornaments,