(1991) 10 AHC CK 0014

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1106 of 1991

Hari Saran Verma and Another APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 04-10-1991

Acts Referred:

Customs Act, 1962 — Section 111, 112, 119
General Clauses Act, 1897 — Section 30, 6
Penal Code, 1860 (IPC) — Section 161, 162, 405

Citation : (1992) 42 ECR 312

Hon'ble Judges : B.P. Jeevan Reddy, C.J;J.K. Mathur, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.P. Jeeva Reddy, C.J.—This writ petition is filed questioning the legality and validity at the order passed by the Collector, Central Excise, Kanpur on 27.5.1991 under the provisions of the Customs Act and the Gold Control Act.

2. On the basis of credible information received, the officers of D.R.I., New Delhi intercepted and searched the two petitioners on 11.10.1988 at Mathura Railway Station and recovered from them, in all, 100 foreign gold biscuits. Their statements were recorded on that occasion and subsequently their residential and business premises were also searched. On the basis of the material gathered a show cause notice was issued to both the petitioners on 29.3.1989 calling upon them to show cause why the said gold should not be confiscated and why the penalties should not be imposed under the aforesaid two enactments. In response to the show cause notice the petitioners submitted their explanations which were considered and under a very elaborate order, the Collector, Central Excise, Kanpur passed the order, the operative portion of which reads thus:

In view of above, I order absolute confiscation of the 100 foreign marked gold biscuits weighing 11,665 gms. under the provisions of Section 111(d) of the Customs Act, 1962 and Section 71 of the Gold (Control) Act, 1968.

I also order confiscation of both the brief cases along with cloth, and packing material u/s 119 of the Customs Act, 1962.

I also impose a personal penalty of Rs. one lakh on Shri Hari Saran Verma and Rs. 50 thousand on Shri Roop Kishore Verma under the provisions of Section 112 of the Customs Act, 1962. I also impose a penalty of Rs. one lakh on Shri Hari Saran Verma and Rs. 50 thousand on Shri Roop Kishore Verma under the provisions of Section 74 of the Gold Control Act, 1968. A personal penalty of Rs. 50 thousand is imposed on Shri Ganesh Lal s/o Chhanga Lal Jain for abetment under the provisions of Section 112 of the Customs Act, 1962, and a penalty of Rs. 50 thousand is imposed on him under the provisions of Section 74 of the gold Control Act, 1968.

The Gold (Control) Act, 1968 has since been repealed but continuity of action initiated earlier is saved by Section 6 of the General Clauses Act, 1897.

3. This writ petition was filed on 20.8.1991. The main contention urged by Sri Raj Pal, the learned Counsel for the petitioners runs thus:

The Gold Control Act was a temporary enactment. It has since been repealed. Section 6 of the General Clauses Act does not apply to temporary enactments. There is nothing in the repealing Act keeping alive the pending proceedings. Therefore, all the proceedings pending under the Gold Control Act lapsed on the repeal of the Act. The petitioners accordingly are entitled to return of the gold. Indeed the very impugned order is void altogether.

4. The writ petition came up for admission on 30.9.1991. We heard the learned Counsel for the petitioner at length. We are satisfied that there is no substance in the contention urged by him. We find no basis for saying that the Gold Control Act, 1968 was a temporary Act. It was an enactment like any other enactment. The learned Counsel for the petitioners placed strong reliance upon a Full Bench decision of this Court in B. Bansgopal Vs. Emperor . The Full Bench was dealing with the Criminal Law Amendment Ordinances 2 and 10 of 1932. The Full Bench held that Section 6 of the General Clauses Act is applicable only where a previous Ordinance has been ''repealed'' by a subsequent Ordinance or by a subsequent Act, but it does not apply to a case where a temporary Ordinance automatically expires after the period, during which it is in operation, is over. Accordingly the Full Bench hold that even though Section 30 of the General Clauses Act makes Act applicable to Ordinances Section 6 has no application to such temporary Ordinances. We do not think that the principle of the said decision has any application here.

5. The learned Counsel for the petitioners then relied upon the decisions in Om Prakash Gupta Vs. State of U.P., . The contention urged before the Supreme Court was that Sections 5 and 6 of the Prevention of Corruption Act, 1947, had the effect of repealing Sections 161 and 162 as well as 405 of the Penal Code. Negativing the said contention the Supreme Court observed:

the provision of Corruption Act being a temporary one, the legislature would not have intended in the normal course of things that a temporary statute like that should supersede an enactment of antiquity, viz. the Penal Code even if the matter covered the same field.

Then it proceeded to observe:

Under Section 6(a) of the General Clauses Act if by efflux of time, the period of a temporary statute which had repealed on earlier statute expires, there would not be a revival of the earlier one by the expiry of the temporary statute.

We do not think that the said decision advances the case of the petitioners in any manner. The Prevention of Corruption Act as initially enacted was to be in operation for a period of five years which was extended by Act No. 2 of 1952 to ten years. It is for this reason that the said Act was called a temporary enactment by the Supreme Court. There was no provision in the Gold Control Act to limit its operation to a particular period. It was just like any other enactment.

6. The learned Counsel then relied upon the case of State of U.P. v. Jagavender Das and Ors. AIR 1954 SC 638. That was a case arising under a Control Order made under the Defence of India Act. There it was held that no prosecution can be commenced after the date of repeal or expiry of an enactment. In this case, the proceedings were initiated long before repeal of the Gold Control Act. The question is one of continuance of pending proceedings in this case.

7. There is yet another reason why we should decline to interfere. The operative portion of the impugned order, extracted hereinabove, clearly shows that the order of confiscation of the gold biscuits was ordered both under the provisions of Customs Act as well as Gold Control Act. Similarly levy of the penalty is under both the Acts. In such a case even if by any reason it can be said that the proceedings cannot be continued under the Gold Control Act, there can be no doubt that they can be continued under the Customs Act. But as we have held hereinabove, the proceedings can be continued even under the Gold Control Act by virtue of Section 6 of the General Clauses Act.

8. The writ petition accordingly fails and is dismissed. No costs.

9. If however the petitioners file an appeal against the impugned order within six weeks from today the same may be entertained by the Appellate Authority without raising an objection on the ground of limitation. The appeal shall be dealt with in accordance with law.

