
(1972) 11 MAD CK 0036
In the Madras High Court

J.A. Abdul Hamid

APPELLANT

Vs

The Collector of Central Excise

RESPONDENT

Date of Decision : 02-11-1972

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1973) 86 LW 837 : (1973) 1 MLJ 311

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

Bench : Single Bench

Judgement

K. Veeraswamy, C.J.—These two petitions under Article 226 of the Constitution are to restrain the respondent from taking any steps in

pursuance of a seizure of 18 sovereigns On 27th January, 1969, from the premises No. 284/285, Main Road, Avanashi, Coimbatore, and for a

direction to him to return the 18 sovereigns. On that day, about 9 A.M., on information, the respondent searched the business premises of J.A.M.

& Co., at No. 284/285, Main Road, Avanashi. The party which searched, consisted of the Superintendent of Central Excise, Tiruppur, and other

Officers. J.A.M. & Co., was a licensed gold dealer. About the same time, the residences of the partners of the firm were also searched with the

authority of a warrant. Nothing incriminating was seized from the business premises. But, in the residential premises, 10 gold sovereigns were

recovered from Rahimat Begum, wife of Abdul Salam, one of the partner?, and 8 gold sovereigns from Tajun Begum, wife of Md. Sheriff, another

partner. The Mahazar for the search and also the counter affidavit filed for the respondent show that the search was made in the presence of two

witnesses, Viswanathan Chettiar and Natarajan who were also gold dealers, and one Mrs. Michael Ammal, a nurse of the local hospital. It was

she who-searched the two ladies, with the result mentioned. The gold sovereigns were stated to have been secreted in a plastic bag by Tajun

Begum. On 28th April, 1969, the two ladies were served by the Assistant Collector of Central Excise, Erode, with notices to show cause why

they should not be proceeded against for contravention of Section 8(3) read with Section 16(5) of Act XLV of 1968. The notices state that the

two ladies had acquired and were found in possession of gold articles in excess of the quantity specified in Sub-section (5) of Section 16 and failed

to make a declaration. The notices mention also that no other goods or incriminating documents were seized from the house. The petitioners claim

that the seizure was illegal because of defective warrant. But, On the view we take of the facts, it is not necessary to go into this.

2. The two ladies owned and possessed not merely" the 18 sovereigns but also gold ornaments, and, since a family u/s 16 (5) (1) (b) was entitled

to own and possess gold articles and ornaments not exceeding 4,000 grams, the notices served on the two ladies were entirely without jurisdiction.

3. The fact that the two ladies possessed, in addition to the sovereigns recovered, ornaments not exceeding 4,000 grains is categorically stated in

the supplemental affidavit filed in this case. The truth of this statement is not denied by the respondent in his supplemental counter-affidavit. He says

that he is not in a position to say one way or the other on account of the distance of time. This allegation about owning and being in possession of

ornaments was, no doubt, made in the course of pendency of this petition in this Court. But it appears to be rather curious that the search, as

disclosed by the Mahazar, did not make any effort to find whether there were other ornaments in the house. It was not improbable that the two

Muslim ladies had at least some gold ornaments. If that be so, as we consider it was the case, the family would not be required to make a

declaration in view of Section 16 (5)

4. But learned Counsel for the respondent contends that Clauses (a) and (b) of Section 16 (5) will have to be read and construed in conjunction

with each other and harmoniously, and that, so read, Clause (b) only means that articles not exceeding 50 grams in weight taken with ornaments in

total not exceeding 4,000 grams would be the limit. It is said that any other construction would defeat the intention of Section 16 (5) (a). We are

unable to construe the provisions in the manner suggested. To do so, would be to insert words in Clause (b) of Section (16) (5) which are not

there. What it speaks of are articles and ornaments, and, if both of them are owned possessed, held or controlled by an individual or family, then

the proper provision which will be attracted is Clause (b). There is no justification for the construction that the limit placed by Section 16 (5) (a)

should be imported into Clause (b). There is no warrant for it in the language used.

5. This is a case where the ladies owned and possessed articles and ornaments which are not shown to exceed 4,000 grams or even 2,000 grams.

That being the case, the notices served were without jurisdiction.

6. The petitions are, therefore, allowed with costs in one of them. Counsel's fee Rs. 250.

7. The 18 sovereigns seized from the respective ladies will be returned to them within a month from to-date.