
(1980) 11 AP CK 0010
In the Andhra Pradesh High Court

Jangala Haranadh Babu

APPELLANT

Vs

Assistant Collector of Central Excise, Vijaywada and Others

RESPONDENT

Date of Decision : 29-11-1980

Acts Referred:

Gold (Control) Act, 1968 — Section 16(3), 71, 8(3)

Citation : (1980) 11 AP CK 0010

Hon'ble Judges : B.P. Jeevan Reddy, J; Ali Khan, J

Bench : Division Bench

Advocate : V. Parabrahma Sastri, for the Appellant; K. Jagannadha Rao for Central Government, for the Respondent

Judgement

Ali Khan, J.—The writ petition is filed against the order of the 3rd respondent bearing No. 270/1980 dated 29- 11-1980, seeking to quash the same.

2. The basic facts of the case are: The petitioner celebrated the birth anniversary of his only son, Chy. Ranjit Kumar, on 28-4-1974. On that occasion, in accordance with the family customs and traditions prevalent among the relations, six gold ornaments (i.e. gold tumbler, gold Kumkum Bharani, gold plate, two gold Uggu Ginna, ad one gold coin totally weighing 174.900 grams) were presented as birth-day celebration gifts by some of the relatives. These articles were subsequently found in the cradle of the minor and it was not known who has mad the gift of these articles. There is no evidence to show whether all these articles were given by one person, or more than one person.

3. The Income Tax authorities inspected the premises of the petitioner on 3/4-10-1974 and seized the side articles from his residence. The central Excise Department also moved into action and took an inventory of the said articles, weighing about 174,900 grams. The fact, came to light that all these articles were received by the petitioner on the occasion of the birth anniversary of his only son. A show-cause notice dated 23-2-1975 was issued by the 1st respondent alleging that the petitioner has contravened the provisions of section 8(3) and 16(3) of the Gol Control Act, 1968 by retaining the said articles, without

making declaration. The petitioner submitted his written explanation, and also made a personal statement to the effect and he has not contravened any of the aforesaid provisions, and that ordering confiscation of the seized property is against law. The decision, however, was against the petitioner, who went up in appeal to the 2nd respondent. The 2nd respondent confirmed the order of the original authority and dismissed the appeal. Thereupon, the petitioner filed a revision before the 3rd respondent, but that too has been dismissed. It is against these orders that the present writ petition has been filed.

4. During the course of arguments, our attention was drawn pointedly to the provisions of section 8(3) and 16(3) of Gold Control Act. u/s 8(3) it is provided that no person shall acquire, or agree to acquire, the ownership, possession, custody or control of, or buy accept or otherwise receive or agree to buy, accept or otherwise receive any article except by succession, intestate or testamentary. u/s 16(3) the position is that if any person who did not own, possess, hold or control, before the commencement of the Act, any quantity of gold in excess of the quantities specified in sub-section (5), acquires, after the commencement of the Act, the ownership (whether by succession, intestate, or testamentary or otherwise), possession, custody or control of any gold, such person shall, within thirty days of such acquisition or within such further period as the Administration may, on sufficient cause being shown, allow make a declaration in the prescribed form.

5. The provisions of sub-section (2) of Section 16 also will have to be considered in this case, under which it is provided that the declaration referred to in that Section, in relation to any article or ornament, or both, owned by a minor or a lunatic, shall be made by the guardian or manager of such minor or lunatic.

6. A combined reading of these provisions made it clear that any person who is in possession of gold in excess of the quantity which is allowed under the provisions of the Gold (Control) Act and who has not made a declaration as required under law, will render the articles or the gold, as the case may be, liable for confiscation; a fine could also be imposed against such person.

7. Sri Parabrahma Sastri, appearing for the petitioner in this case, has relied mainly on Section 71, which falls under chapter XIII, dealing with confiscation and penalties. In view of the fact that the matter in this case hinges around the provisions of Section 71, it would be in the fitness of things to reproduce the entire Section 71. It reads as follows:

"71. Confiscation of gold:

(1) Any gold in respect of which any provision of this Act or any rule or order made thereunder has been, or is being or is attempted, to be, contravened together with any package, covering or receptacle in which such gold is goud, shall be liable to confiscation: provided that there it is established to the satisfaction of the officer adjudging the confiscation that such gold or other thing belongs to a person other than the person who has, by any act or omission

rendered it liable to confiscation, and such act or omission was without the knowledge or connivance of the person to whom it belongs, it shall not be ordered to be confiscated but such other action, as is authorised by this Act, may be taken against the person who has, by such act or omission, rendered it liable to confiscation.

(2) where any package, covering or receptacle referred to in subsection (1) contains any goods, such contents shall also be liable to confiscation.

(3) Where any gold is liable to confiscation under sub-section (1) it shall be so liable notwithstanding any change in its form, and where such gold is mixed with other goods in such manner that it cannot be separated from those other goods, the whole of such goods, including the gold, shall be liable to confiscation.

(4) On and from the commencement of the Gold (Control) Amendment Act, 1971, the proviso to the sub-section (1) shall also apply to any gold or other thing which is liable to confiscation under subsection (2) or sub-section."

Our attention has been drawn particularly to the proviso to Section 71, which deals with the aspect that if it is established to the satisfaction of the officer adjudging the confiscation that such gold or other thing belongs to a person other than the person who has, by any act or omission, rendered it liable to confiscation, then confiscation shall not be ordered, but such other action as is authorised by the Act, may be taken against the person who has, by such act or omission, rendered it liable to confiscations. Now, the object of the learned counsel for the petitioner in relying so heavily on the proviso to Section 71, is that in accordance with the evidence available in this case, as well as the order passed by the Asstt. Collector of Central Excise, it is admitted that the articles in question belonged to the minor. In fact, in paragraph 6 of the order passed by the original authority, it is stated that after going through the record of the case, it is obvious that this is 'an act of acquisition of ownership or possession otherwise than by succession, intestate or testamentary,' as the articles were undoubtedly recovered from the cradle of the minor whose birth-day was celebrated a few days back. This fact is not controverted by the appellate authority or the revisional authority or the revisional authority as well. In paragraph 3 of Order No. 270/1980 it is stated that "the acquisition of gold articles except by succession is prohibited u/s 8(3) of the Gold (Control) Act, 1968. the applicant received 174 grams of gold articles as gifts in contravention of the provisions of above section.....". Now it is clear that even according to the revisional authority, the petitioner received these articles on behalf of the minor the whom these gifts were made by the relatives. Once this position is clear, we find much substance in the submission made by the learned counsel for the petitioner that the proviso to Section 7(1) comes into play with full force. Under the proviso, if the articles belong to a person other than the person who has by any act or omission, rendered the same liable to confiscation and such act or omission was without the knowledge or connivance of the person to whom the articles belong, they shall not be ordered to be confiscated, but action may be

taken against the person who has failed to make a declaration as required under the provisions of the Gold (Control) Act, 1968. It goes without saying that the minor in this case could not have made a declaration, nor can it be said that he connived with his guardian in retaining the said articles without making a declaration, which falls within the purview of Section 8(3) of the Act. The net result of this situation is that the articles seized are not liable for confiscation as provided under the Act. The only course, therefore, left open to the authorities in such a situation is to take action as provided in Section 75 of the Act, which deals with levy of penalties for contravention, etc., not expressly mentioned. According to Section 75, any person who contravenes any provision of the said Act or any rule or order made thereunder or abets such contravention, or fails to comply with any of the provisions of the Gold (Control) Act, and where no express penalty is elsewhere provided, shall be liable to pay such penalty, not exceeding Rs.1,000/- for every such contravention, failure or abetment, as the case may be. The order of the revisional authority dated 29-11-1980, assailed in this writ petition, confirms the decision of the Asst. Collector of Central Excise, under which the articles in question have been confiscated and a fine of Rs. 1,000/- which has been imposed u/s 74 of the Act. We accordingly hold, in the light of the foregoing discussion, that the gold articles in question are not liable to be confiscated in this case, for the reason that the minor is the owner of the said articles. We also hold that the imposition of penalty of Rs. 1,000/- u/s 74 is also misplaced in the sense that, u/s 14, penalty is imposed on a person who, by his illegal action, renders the gold in his possession liable for confiscation. The penalty of Rs. 1,000/- imposed by the authorities is sustained u/s 75 of the Gold (Control) Act, 1968 to which a reference has already been made. This amount of penalty shall be recovered from the guardian, as the minor has nothing to do with the matter as such.

8. The writ petition is allowed accordingly., No costs.