(1987) 06 AP CK 0014

In the Andhra Pradesh High Court

Case No : Writ Petition No. 444 of 1981

Jangala Haranadha Babu — APPELLANT

Vs

The Assistant Collector of Central Excise, Vijayawada and Others — RESPONDENT

Date of Decision : 08-06-1987

Acts Referred:
Gold (Control) Act, 1968 — Section 71(1), 74, 75

Citation : AIR 1988 AP 278 : (1988) 15 ECC 87 : (1987) 12 ECR 1080 : (1987) 32 ELT 314

Hon'ble Judges : Sardar Ali Khan, J;Jeevan Reddy, J

Bench : Division Bench

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

Judgement

Sardar Ali Khan, J.—This writ petition filed against the order of the 3rd respondent bearing No. 270/1980 dt. 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 Kumkuma Bharina, gold plate, two gold Uggu Cinnolu, and one old coin - totally weighing 174.900 grams) were presented as birth-day celebration gifts by some of the relatives. Those articles were subsequently found in the cradle of the minor and it was not known who has made the gift of these articles. There is also no evidence to show whether all these articles were given by one person, or by more than one person.

3. The Income Tax authorities inspected the premises of the petitioner on 3/4-10-1974 and seized the said 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 dt. 23-2-1975 was issued by the 1st respondent alleging that the petitioner has contravened the provisions of Ss. 8(3) and 16(3) of the Gold Control Act, 1968 by retaining the said articles, without making a declaration. The petitioner submitted his written explanation, and also made a personal statement to the effect that 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 Ss. 8(3) and 16(3) of the Gold Control Act. Under 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. Under 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-s. (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 Administrator may, on sufficient cause being shown, allow, make a declaration in the prescribed form.

5. The provisions of sub-s. (2) of S. 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 three Provisions makes 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 S. 7 1, which falls under Chap. XIII dealing with. confiscation and penalties. In view of the fact that the matter in this case hinges around the provisions of S. 71, it would be in the fitness of things to reproduce the entire S. 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 found,

shall be liable to confiscation:

(2) Provided that where 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.

(3) Where any package, covering or receptacle referred to in sub-sec. (1) contains any goods, such contents shall also be liable to confiscation.

(4)

(5) Where any gold is liable to Confiscation under sub-sec. (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 these other goods, the whole of such goods, including the gold, shall be liable to confiscation.

(6)

(7) On and from the commencement of the Gold (Control) Amendment Act, 1971, the proviso to sub-sec. (1) shall also apply to any gold or other thing which is liable to confiscation under sub-sec. (2) or sub- sec. (3)."

(8)

Our attention has been drawn particularly the proviso to S. 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 confiscation. Now the object of the learned counsel for the Petitioner in relying so heavily on the proviso to S. 71 , is that in accordance with the evidence available in this ewe, as well as the order passed by the Asst. 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 as well In para 3 of Order No. 270/1980 it is stated that "the acquisition of gold articles except by succession is prohibited under S. 8(3) of the Gold (Control) Act, 1968. The applicant received 174 gms. 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 to 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 S. 71(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 mission was without the knowledge or connivance of the person to whom the. articles along. 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 S.8(3) of the Act. The net result of this situation is that the articles seized are not able 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 S. 75 of the Act which deals with levy of penalties for contraventions to not expressly mentioned. According to S.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 there no express penalty is elsewhere provided, shall be liable to pay such penalty of exceeding Rs.1,000/-, for every such contravention, failure or abetment, as the case may be. The order of the revisional authority dt. 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/- has been imposed under S.74 of the Act. We accordingly hold in the light of the forgoing 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 gold articles. We also hold that the imposition of penalty of Rs.1,000/- under S. 74 is also misplaced in the sense that, under S. 71, 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 under 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.

9. Petition allowed

