
(1978) 04 MAD CK 0041
In the Madras High Court

Kanyalal Chandrakumar

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 17-04-1978

Acts Referred:

Gold (Control) Act, 1968 — Section 6(2)

Citation : (1979) 1 MLJ 305

Hon'ble Judges : Ramanujam, J

Bench : Division Bench

Judgement

Ramanujam, J.—The petitioner herein is a proprietors concern doing pawn-broker's business at No. 60, Wallajah Road, Woriyur, Tiruchirapalli. The said business premises was searched by the Officers of the Central Excise on 14th February, 1970, and unaccounted primary gold, gold coins and new and old ornaments in all weighing 1531.300 grams were seized for action under the Gold (Control) Act. The case was adjudicated by the Deputy Collector of Central Excise, Tiruchi on 3rd September, 1970, and the gold under seizure was confiscated subject to the redemption on payment of a fine of Rs. 5,000. A penalty of Rs. 2,500 was also imposed on the petitioner. In pursuance of the said order of adjudication, the primary gold, the gold ornaments and gold coins weighing in all 1531.300 grams were released to the petitioner on 23rd September, 1970, on payment of the redemption fine on 27th January, 1971. However, the petitioner filed an appeal before the Collector of Central Excise, who by an order, dated 22nd April, 1972, rejected the same. Against the rejection of the appeal, the petitioner filed a revision petition to the Government of India, who by an order dated 12th February, 1974, rejected the revision petition. The petitioner thereafter approached this Court for the issue of a writ of certiorari quashing the said order, dated 12th February, 1974, affirming the order of adjudication.

2. The petitioner's case is that the authorities cannot invoke Section 6(2) of the Gold (Control) Act, 1968 (hereinafter referred to as the Act) in this case, and

therefore, the order of confiscation passed by the initial authority and affirmed by the appellate and revisional authorities cannot be sustained in law. It is the further case of the petitioner that there is no material in this case to indicate that the petitioner is carrying on business as a dealer without a valid licence issued on behalf of the Administrator, that therefore, there is no violation of Section 27 of the Act and that as such the petitioner cannot be proceeded with for violation of the said section. As regards the alleged violation of Section 8 of the Act for being in unauthorised possession of primary gold, the petitioner would say that the primary gold, possessed by it was only of a small quantity and therefore, the possession of such small and negligible quantity should be ignored. The question is whether the above contentions of the petitioner could be accepted.

3. According to the petitioner, the gold ornaments and gold coins seized from its business premises belong to one of the family members of the partners of the petitioner firm, that they have not come into its possession in the course of the pawn-broker's business, that therefore, the petitioner is not liable to keep any account with regard to those jewels and coins and that the mere fact that the petitioner has not kept any account for those jewels and coins will not lead to the inference that the petitioner has got those gold ornaments and coins in the course of its pawn - broker's business or as a dealer doing business in gold. It is also submitted by the learned Counsel for the petitioner that Section 6(2) of the Act will come into play only when directions are given by the Administrator calling for certain returns as to the receipt or sale of hypothecated gold u/s 6(1) of the Act, that in this case there having been no direction by the Administrator to the petitioner to file its returns u/s 6(1), the petitioner is not liable to account for the gold ornaments and gold coins seized from its possession, u/s 6(2) of the Act, According to the petitioner only when the Administrator calls for a return in relation to the receipt and sale of hypothecated gold u/s 6(1), he may authorise any Gold Control Officer to inspect any pawnbroker's premises and call upon the pawnbroker to account for the gold or gold ornaments found to be in excess of the stock referred to in his accounts or in the returns. Thus it is the contention of the learned Counsel for the petitioner that it is only after the return is furnished by the pawn-broker as per the direction given u/s 6(1) of the Act, the Administrator can invoke the machinery contemplated u/s 6(2) of the Act.

4. The learned Counsel for the petitioner refers to the decision in *Badri Prasad and Others, etc. Vs. Collector of Central Excise and Others, etc.,* , wherein the scope of Sections 6(1) and 6(2) of the Gold (Control) Act, 1968 has been dealt with. In that case the Supreme Court has observed thus:

The provision in Section 6(1) empowering the Administrator to call upon any pawnbroker to furnish a return does not do away with his obligation to file a declaration u/s 16(1). Section 6(1) empowers the Administrator to take action in special cases where he thinks it necessary to call upon a money lender to make a return and u/s 6(2) he is empowered to authorise any Gold Control Officer to examine the accounts of such pawn-broker.

The learned Counsel for the petitioner wants to emphasise the words "such pawn-broker" occurring in the observations of the Supreme Court and submits that the Supreme Court has understood Section 6(2) as consequential on Section 6(1) and not as an independent provision. But, however, on a close reading of Section 6(1) and (2) of the Act, I am inclined to hold that Section 6(1) and (2) of the Act are not intended to serve the same purpose. I do not read the above observations of the Supreme Court as laying down that Section 6(2) of the Act cannot operate without there being a previous action u/s 6(1). Section 6(1) of the Act enables the Administrator, if it is necessary in public interest, to require any person who lends or advances money on the hypothecation, pledge, mortgage or charge of any article or ornament to file a return; as to the receipt, delivery or sale of such article or ornament and as to the persons from whom they were received or, as the case may be to whom they were delivered or sold. Sub-section (2) of Section 6 however enables the Administrator to authorise any Gold Control Officer to examine the accounts relating to the receipt, delivery or sale of any gold, of any person who advances any money on the hypothecation, pledge, mortgage or charge of any article or ornament, and if any gold is found in the possession of such person which is not entered in such accounts or which is in excess of the quantity shown in such accounts, and which is not otherwise accounted for to the satisfaction of such Officer, such gold shall be deemed to be in the possession of such person in contravention of the provision of this Act. Section 6(2) does not refer to the return contemplated u/s 6(1) of the Act. Section 6(2) merely authorises the Administrator to have the accounts of any person who advances money on hypothecation, pledge, mortgage or charge of any article or ornament checked by the Gold Control Officer and to treat the amount of gold which has not been duly accounted for as excess gold. In my view, action u/s 6(2) of the Act could be taken by the Administrator even though the person concerned has not filed any return u/s 6(1) or the return is not called for by the Administrator. In this case it is true that the petitioner has not been called upon to file a return u/s 6(1) and an independent action has been taken u/s 6(2). The Officers of the Central Excise who have been invested with the powers under the Gold (Control) Act have found the gold and gold ornaments in excess of the quantity referred to in the accounts of the petitioner's pawn-broker's business. It is true that the petitioner gave an explanation that the gold jewels and gold coins belong to one of the family members of the partners of the firm and that since there was no sufficient safety in his residential premises, he kept the same for safe custody in the business premises. But this explanation has not been accepted by the original authority as well as the appellate or revisional authorities and therefore, it should be taken that the petitioner has not accounted for the excess gold and gold ornaments to the satisfaction of the Officers. Therefore, the petitioner has rightly been treated as having been in possession of gold and gold ornaments in contravention of the provisions of the Gold (Control) Act as per Section 6(2).

5. The learned Counsel for the petitioner would say that Section 6(2) of the Act

merely says that the person possessing unaccounted gold should be deemed to have contravened the provisions of the Act, that the section does not say which provision of the Act has been contravened, and that such a general deeming is not sufficient for taking proceedings against the petitioner under the Gold (Control) Act, 1968, in respect of such excess gold. However, Section 71 of the Act reads thus:

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.

For the application of Section 71 of the Act, it is not necessary for the Gold Control Authority to show that any particular provision of the Act has been contravened. Section 6(2) of the Act makes it clear that the possession of excess gold is the contravention of the provisions of the Act and Section 71 of the Act states that such excess gold can be confiscated. I am not therefore in a position to say that the confiscation of gold and gold jewellery in this case is illegal.

6. As regards the application of Section 27 of the Act, the learned Counsel for the petitioner gays that mere possession by the pawnbroker of some unaccounted jewels will not make the pawn-broker a dealer in gold and that to make him a dealer, it must be shown that such a pawn-broker is actually carrying on, directly or otherwise the business of making, manufacturing, preparing repairing, polishing or converting, gold, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration. According to the learned Counsel for the petitioner excepting the allegation that the petitioner was not able to account for the gold jewels found in the business premises, no other factor has been established so as to bring the petitioner within the definition of a "dealer" as defined in Section 2(h) of the Act. "Dealer" has been defined u/s 2(h) of the Act thus:

(h) "dealer" means any person who carries on, directly or otherwise, the business of making, manufacturing, preparing, repairing, polishing, buying, selling, supplying, distributing, melting, processing or converting gold, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration.

In this case, admittedly, there is no material to show that the petitioner has been dealing in gold in any of the modes referred to in the definition of "dealer", apart from carrying on the pawn-broker's business. As already stated, the possession of unaccounted gold jewels by a pawn-broker may amount to an offence under the Act in view of Section 6(2) but it does not automatically follow that such a pawnbroker who was in possession of gold jewels which he could not account for, is a dealer in gold or gold jewels. In this case, straightaway an inference has been drawn based on mere possession of unaccounted jewels by a pawn-broker. Such an inference is not possible on the facts and circumstances of this case as

there is no other material indicating that the petitioner has been dealing in gold or gold ornaments. Section 27(1) of the Act says that no person shall commence, or carry on, business as a dealer unless he holds a valid licence issued in that behalf by the Administrator. Unless the petitioner has acted as a dealer, it is not required to take out any licence as required u/s 27 of the Act. Therefore, it is not possible to say in this case that the infringement of Section 27 of the Act has been made out.

7. In *In Re: P. Rayappa Goundar*, Maharajah, J., dealt with a case where a person who was transporting paddy without a licence was prosecuted under Clause 3(1) of the Tamil Nadu Paddy and Rice Dealers' Order, 1968 read with Section 7(1)(a)(ii) of the Essential Commodities Act. It was contended for the accused that Clause 3(1) of the Tamil Nadu Paddy and Rice Dealers' Order, 1968 can be invoked only if it is shown that he has been indulging in a continuity of transactions of purchase, sale or storage and that the statutory presumption contained in Clause 3(2) cannot be attracted unless it is shown that the petitioner is carrying on business as a dealer in paddy and rice. Clause 3(2) of the Tamil Nadu Paddy and Rice Dealers' (Licensing and Regulation) Order, 1968 embodied a presumption that where stock of more than two quintals of paddy or rice is found with a given individual, he must be deemed, unless the contrary is proved, to have stored the same for the purpose of sale. Sub-clause (2) made it clear that this presumption would be available only for the purpose of Sub-clause (1) of Clause 3 which reads as follows:

No person shall start afresh or carry non-business as a dealer except under and in accordance with the terms and conditions of a licence issued in this behalf by the licensing authority.

Maharajan, J., expressed the view that even if a person transported paddy without a licence he would still not be liable under Clause 3(1) of the Tamil Nadu Paddy and Rice Dealers' Order, 1968 read with Section 7(1)(a)(ii) of the Essential Commodities Act, in the absence of proof that he has been indulging in a continuity of transactions of purchase, sale or storage, that as the prosecution has failed to prove by independent evidence a single, casual or solitary transaction of transport of paddy indulged in by a person cannot be taken to make him a dealer. Therefore, the said reasoning also applies to the facts of this case where no material has at all been produced or referred to by the respondents that the petitioner has been acting as a dealer in gold or gold ornaments without a licence. Therefore, the petitioner cannot be taken to have contravened Section 27 of the Act.

8. As regards the infringement of Section 8(2) of the Act for having been in possession of primary gold, as already stated, the petitioner admits possession of the primary gold which is not authorised but states that the quantity being so negligible, no action is called for u/s 8(2) of the Act. In this case, apart from the levy on the redemption on payment of fine in lieu of confiscation, the respondents have levied a sum of Rs. 2,500 as fine for the contravention of

Sections 8 and 27 of the Act. In this case, the petitioner cannot be held to have infringed Section 27 of the Act though it has admittedly infringed Section 8(2) for having been in possession of small and negligible quantity of primary gold. Since the fine of Rs. 2,500 has been levied on the ground that there has been an infringement of a Sections 8 and 27 of the Act by the petitioner, and the findings of the authorities relating to the infringement of Section 27 of the Act has now been found to be not tenable, any fine that could be imposed can only be on the basis of the infringement of only Section 8. Whether the infringement of Section 8 alone calls for any penalty and if so what is the quantum of penalty to be levied is a matter for the 1st respondent to decide.

9. Hence, the impugned order is set aside with a direction to the respondent to consider the question whether a personal penalty is called for and if so what is the quantum of penalty to be imposed in the light of the findings and observations made above. The impugned order in so far as it relates to the confiscation is confirmed. This writ petition is allowed in part. No costs.