(1981) 08 MP CK 0008

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 26 of 1980

Nemichand Bhansali APPELLANT

Vs

Superintendent of Central Excise (Preventive) Raipur and Others RESPONDENT

Date of Decision : 13-08-1981

Acts Referred:
Gold (Control) Act, 1968 — Section 16, 16(1), 16(3), 16(5)

Citation : AIR 1981 MP 253 : (1981) 8 ELT 938 : (1982) JLJ 464 : (1981) 26 MPLJ 699 : (1981) MPLJ 699

Hon'ble Judges : G.P. Singh, C.J;Faizanuddin, J

Bench : Division Bench

Advocate : S. Awasthy, for the Appellant; K.K. Adhikari, for the Respondent

Final Decision : Allowed

Judgement

Faizanuddin, J.

The petitioner''s father, late Amolakchand, was carrying on money-lending business under the licence granted by the State Government in that behalf. On 30-11-1974 the Central Excise Officials raided his shop and residential premises and seized 1754.00 grammes of pledged gold ornaments from his shop and also household gold ornaments weighing 1500-00 grammes from the Bank locker. Thus the total recovery was 3254.00 grammes of ornaments. A show cause notice was served upon lata Amolakchand for contravention of Section 16 of the Gold (Control) Act, 1968, (hereinafter referred to as the Act). The Collector of Central Excise, Nagpur, by his order dated 13th Apr. 1976 (Annexure-VI) found Amolakchand to be guilty for contravention of Section 16 of the Act for being in possession of gold ornaments the total weight of which was found to be 3254.00 grammes which exceeded the exemption limit of 2000.00 grammes in respect of which a declaration ought to have been filed in accordance with the provisions of Section 16 of the Act. The Collector, Central Excise, therefore, confiscated the household ornaments weighing 1500.00 grammes u/s 71 of the Act with an option to redeem the same, if so desired, on payment of a fine of Rupees 60,000-00. A fine of Rs. 10,000-00 was also imposed u/s 74 of the Act. The pledged ornaments, weighing 1754.00 grammes were, however, released.

On appeal against the aforesaid order, the Gold Control Administrator, Delhi, by his order dated 21st May 1971 (Annexure VIII) reduced the redemption fine only from Rs. 60,000-00 to Rupees 20,000-00. In revision before the Central Government, the order of the appellate tribunal was further modified to the extent that the amount of penalty imposed u/s 74 of the Act was reduced from Rs. 10,000-00 to Rs. 2500-00 only: Vide order of the Central Government dated 31st Aug. 1979 (Annexure XI). During the pendency of the revision, petitioner''s father, Amolahchand, died on 13-9-1978 and the revision was continued by the petitioner. By this petition under Article 226 of the Constitution, the petitioner seeks the issuance of a writ in the nature of certiorari for quashing all the aforesaid adverse orders (Annexures VI, VIII and XI) with a further relief for return of confiscated personal ornaments weighing 1500.00 grammes.

The contention of the learned counsel for the petitioner is twofold. He first contended that the quantities of both the pledged and personal ornaments could not be clubbed together for the purposes of making a declaration u/s 16 (1) or (3) of the Act in view of the provisions contained in Section 16 (5) (b) and Section 16 (5) (c) read with Section 16 (2). Secondly, pleading his reliance on Gem Palace v. Union of India, AIR 197o Raj 225 he contended that most of the gold ornaments seized from the Bank-locker weighing 1500-00 grammes belonged , to his daughter and as such, late Amolak-chand could not be said to be in possession of gold ornaments of the quantity more than the prescribed limit and that he was not responsible for making the required declaration in respect of those ornaments. As against this, the learned counsel for the respondents supported the impugned decisions taken by the authorities concerned.

At the very outset, we feel that for better appreciation of the respective contentions raised, it is necessary to set out the relevant portions of Section 16 of the Act which run as under:--

"Section 16. Declaration as to the articles or ornaments:-- (1) Save as otherwise provided in this Chapter, every person who owns, or is in possession, custody or control of, any article or ornament at the commencement of this Act, or acquires the ownership, possession, custody or control of any article or ornament thereafter, shall make, within thirty days from such commencement or from such acquisition, as the case may be, or within such further period as the Administrator may, on sufficient cause being shown allow, a declaration in the prescribed form as to the quantity, description and other prescribed particulars of any article, or ornament, or both, owned, possessed, held or controlled by him;

Provided .....

Provided .....

(2) For the removal of doubts, it is hereby declared that the declaration referred to in this section shall be made, in relation to any article, or ornament, or both-

(a) owned by a minor or a lunatic, by the guardian or manager of such minor or lunatic, as the case may be;

(b) owned by an idol or a deity, by the manager of such idol or deity, whether known as shebait or by any other name;

(c) owned, possessed, held or controlled by a person whose properties are under the management, of any administrator or receiver, by such administrator, or receiver;

(d) owned, possessed, held or controlled by a person whose properties are under the management of a Court of Wards, by the manager of such Court;

(e) vested in an executor or an administrator of a will or other testamentary disposition, by such executor or administrator;

(f) owned, possessed, held or controlled by the members of a firm, by any partner of such firm;

(g) owned, possessed, held or controlled by a Hindu undivided family, by the head or karta of such family;

(h) which is the subject-matter of any public or private trust, by the trustee of such trust;

(i) owned, possessed, held or controlled by a company, whether incorporated in or outside India, by any person in charge of the management of the affairs of such company;

(j) belonging to a temple, church, mosque, gurdwara or any other religious institution, by the person in charge of the management of such temple, church, mosque, gurdwara or other religious institution;

(k) which is wakf property, by the mutawalli of such wakf;

(l) owned, possessed, held or controlled by any society, club or other association, by the Secretary or Manager of such society, club or other association

(m) owned, possessed, held or controlled by any other person, by such person as may be prescribed.

(3) If any person who did not own, possess, hold or control, before the commencement of this Act, any quantity of gold in excess of the quantities specified in Sub-section (5), acquires, after such commencement, the ownership (whether by succession, intestate or testamentary, or otherwise), possession, custody or control of any gold and if, as a result of such acquisition, the total quantity of gold owned, possessed, held or controlled by such person exceeds the quantities specified in Sub-section (5), such person shall, within thirty days

from the date 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 stating the total quantity, description and other prescribed particulars of-

(a) the gold owned, possessed, held or controlled by him immediately after such acquisition, and

(b) the person from whom the ownership, possession, custody or control of such gold was acquired.

(4) .....

(5) No declaration referred to in subsection (1) or Sub-section (3), shall be required to be made,--

(a) in relation to articles, unless the total weight of articles owned, possessed, held or controlled by-

(i) a minor, who is not a member of a family, exceeds twenty grammes,

(ii) an individual (other than a minor), who is not a member of a family exceeds fifty grammes,

(iii) a family, exceeds fifty grammes.

(iv) any person referred to in Clauses (b) to (f) and (h) to (m) of Sub-section (2), exceeds fifty grammes;

(b) in relation to any ornaments, or both articles and ornaments, where both articles and ornaments are owned, possessed, held or controlled, unless the total weight of such ornaments or both articles and ornaments, as the case may be, owned, possessed, held or controlled by,--

(i) an individual who is not a member of a family, exceeds two thousand grammes.

(ii) a family, exceeds four thousand grammes;

(c) in relation to any ornaments, or both articles and ornaments, owned, possessed, held or controlled by any person referred to in clauses (b) to (f) and (h) to (m) of Sub-section (2), unless the total weight of such ornaments, or both articles and ornaments, exceeds two thousand grammes.

(6) For the purposes of this section, "family" shall be deemed to consist of-

(i) the husband, wife one or more minor children or

(ii) any two or more of them, but shall not deemed to include any other person.

(7) Every licensed dealer or refiner shall make a declaration or further declaration, as the case may be, in accordance with the provisions of this section in relation to any gold owned, possessed, held or controlled by him in any

capacity other than the capacity of a licensed dealer or refiner and the provisions of Sub-section (5) shall not apply to such gold.

Explanation.-- Where the licensed dealer or refiner is a company or other body corporate or a firm, the declaration referred to in this Sub-section shall also be made by every director of such company or body corporate or, as the case may be, every partner of such firm, in respect of the gold owned, possessed, held or controlled by him in any capacity.

(8) to (13) ....."

A fair reading of Sub-section (1) of Section 16 will go to show that it requires every person who owns, or is in possession, custody or control of any article or ornament at the commencement of the Act or thereafter to make a declaration in the prescribed form as to the quantity, description and other particulars of any article, or ornament, or both, owned, possessed, held or controlled by him within thirty days from the date of commencement of the Act or from such acquisition of .articles or ornaments. Clauses (a) to (m) of Sub-section (2) specify the persons who shall be responsible to make declaration referred to in Section 16, in relation to any article or ornament or both. Clause (m) of Sub-section (2) is a residuary clause which provides that if the article or ornament or both are owned, possessed, held or controlled by any other person, the declaration in relation to such person shall be made as may be prescribed. A close examination of Clauses (a) to (i) of Sub-section (2) will go to show that the petitioner''s father late Amolak-chand being a pawnee did not fall in any of the categories, classes of persons and association etc. as enumerated in all those clauses, But he squarely fell in the residuary Clause (m) which deals with the ownership, possession, holding and control of article or ornament or both, by any other person like a pledgee or pawnee.

Further, the provisions of sub-section (3) require the making of declaration in the manner and with the particulars contained therein by any person who after the commencement of the Act, acquired ownership, possession, custody or control of any gold the total quantity of which exceeded the quantities specified in Sub-section (5). Clause (a) of Sub-section (5) divides the holders of articles into four categories as enumerated in sub-clauses (i) to (iv) according to which the holder of each category is entitled to hold, articles the total weight of which, does not exceed 50 grammes, except a minor in the first category who is entitled to hold articles the total weight of which does not exceed 20 grammes. It is pertinent to note that the category No. (iv) excludes the coverage of clauses (a) and (g) of Sub-section (2) as they refer to a minor and Hindu undivided family respectively, because they have already been given a separate category Nos. (i) and (iii) in clause (a) of Sub-section (5). Sub-section (5) (b) provides that no declaration is required to be made if the total quantity of ornaments or both ornaments and articles, owned, possessed, held or controlled by an individual who is not a member of a family does not exceed 2000.00 grammes and in the casa of a family it does not exceed 4000.00 grammes. Again Sub-section (5) (c) provides that no declaration is required to be made by any person referred to in clauses (b) to (f) and (h) to (m) of subsection (2) if the total quantity of ornaments, or both articles and ornaments, does not exceed 2000.00 grammes. As said earlier, late Amolakchand was a pawnee in respect of 1754.00 grammes of ornaments and he fell in the residuary Clause (a) (m?) of Sub-section (2) in relation to those ornaments.

A careful reading of the aforesaid provisions of Sub-sections (2) and (5) with its Clauses (b) and (c) will go to show that any person may in relation to any ornaments, or both articles and ornaments, own, possess, hold or control the same in two different capacities within the prescribed quantity in each of such capacities and in that event he is not required to make any declaration under Sub-sections (1) and (3) of Section 16 of the Act. Under sub-clause (i) of clause (b) of Sub-section (5) a person may own, possess, hold or control ornaments up to the quantity of 2000.00 grammes in the capacity of an individual and at the same time, under clause (c) of Sub-section (5) he may also own, possess hold or control the ornaments up to the quantity of 2000.00 grammes for others in the capacity of any other person referred to in clauses (b) to (f) and (h) to (m) of Sub-section (2) without making any declaration. Thus, Section 16 read as a whole or any other provisions of the Act neither expressly or by necessary implication contemplate that for purposes of making a declaration the holding of ornaments or both articles and ornaments, of a person in two different capacities, that is, his personal and on behalf of any other person will be clubbed together. To our mind this is the only rational conclusion which may be drawn after a close and critical examination of the relevant provisions of the Act. If it were not so, then there may be cases where an individual or a Karta of a family may not be entitled to hold any ornaments or both articles and ornaments if he holds the same for others to the maximum prescribed quantity and in such a circumstance, an individual or a Karta will never be prepared to hold for others, ornaments or both articles and ornaments in the capacities referred to in clauses (b) to (f) and (h) to (m) of subsection (2), Take for an example the case of a firm, Hindu undivided family or a wakf property in respect of which a person holds ornaments to and maximum prescribed quantity in the capacity of a partner of such firm, a Karta of Hindu Undivided family or a Mutawalli of such wakf property and if for purposes of making a declaration under the Act he is required to club his personal holdings also which he holds in his individual capacity together with the holdings of others, then probably he may have to lose his own, the same being in excess of the prescribed limit. Again, if a person holds ornaments or both articles and ornaments in various capacities for others as referred to in clauses (b) to (f) and (h) to (m) of Sub-section (2) and in each case to the maximum prescribed quantity and if the principle of clubbing is accepted, (which does not appear the intention of the legislature for obvious reasons), it would lead to hazardous results.

From the above discussion, it fol-lows that a person may hold ornaments or both articles and ornaments to the maximum prescribed limit in his individual capacity as well as in the capacity of any other person referred to in clauses (b) to (f) and (h) to (m) of Sub-section (2) of Section 16 and therefore, for purposes of making a declaration u/s 16 (1) or (3) it is not necessary for such a person to club both the holdings together, because a person while holding any ornaments or both articles and ornaments for others as referred to above, he does not lose his personal right as an individual to hold and possess the same up to the prescribed quantities under the Act and his right of personal holding will not be affected by the quantities of articles and ornaments possessed, held or controlled by him for others in the capacities enumerated in Sub-section (2), The household ornaments of late Amolakchand as an individual, therefore, could not be clubbed together with the pawned ornaments for the purposes of declaration under the Act. He held 1754.00 grammes of ornaments as pledgee and 1500.00 grammes ornaments in his personal capacity. As both were within the prescribed limit in each capacity, it was not therefore necessary for him to make any declaration.

The learned counsel for the respondents tried to support the impugned orders on the strength of the trade Notice No. 6/60 dated 25th October, 1969 (Ann. R-IV) which was issued by the Collector of Customs and Central Excise, Nagpur giving hts own clarification regarding the quantitative exemption limits u/s 16 (5) of the Act. According to this Public Notice, if the total holdings of a money-lender including his personal holdings exceeded the prescribed limit, then he must file a declaration. As said earlier, the law nowhere lays down that the holdings of a money-lender in the capacity of a pledgee of ornaments as well as his individual holdings are required to be clubbed together for purposes of making a declaration. The said public notice does not contain a statutory requirement but the interpretation of the Collector of Customs and Central Excise which does not conform to the requirement of law land as such it could not be given effect to.

The argument of the learned counsel for the respondents further loses all force if it is examined in the light of subsection (7) of Section 16 of the Act which on the contrary strengthens the view that we have taken to the effect that the legislature never intended to club the holdings of persons in various capacities to-gether for purposes of declaration. As reproduced in para 4 above, Sub-section (7) of Section 16 provides that every licensed dealer or refiner shall make a declaration or further declaration, as the case may be, in accordance with the provisions of this section in relation to any gold owned, possessed, held or controlled by him in any capacity other than the capacity of a licensed dealer or refiner and the provisions of Sub-section (5) shall not ap- ply to such gold. (The Emphasis is sup-plied by us). Thus, Sub-section (7) clearly lays down that licensed dealer or re-finer has to make a declaration of his holdings in any capacity other than the capacity of a licensed dealer or refiner and the provisions of Sub-section (5) shall not apply to such gold. If at all the legislature intended to club together the personal holdings of an individual and the holdings held by him for any other person or persons referred to in clauses (b) to (f) and (h) to (m) of Sub-section (2), for pun poses of declaration, then nothing prevented it to add and the similar words "in any capacity" or "in all capacities" at the end of

Sub-sections (1) and (3) of Section 16 of the Act which deal with the requirement of making a declaration. But it has not been so provided with a clear intention not to club the two.

As the petitioner is getting the relief on the first contention discussed above, it is therefore, not necessary for us to go into the other ground whether or not the ornaments seized from the Bank locker belonged to the daughter of late Amolakchand and by reason of which he was not responsible to make the declaration.

For the reasons stated above, the petition succeeds and is hereby allowed. The impugned orders (Anns. VI, VIII and XI) are quashed. The confiscated ornaments seized from the Bank locker weighing 1500.00 grammes be released and returned to the petitioner. There will be no orders as to costs of this petition. The security amount be refunded to the petitioner.

