(1980) 10 MAD CK 0020

In the Madras High Court

Case No : Writ Petition No. 4502 of 1977

R. Seshammal APPELLANT

Vs

Commissioner of Income Tax and Another RESPONDENT

Date of Decision : 10-10-1980

Acts Referred:

Gold (Control) Act, 1968 — Section 15(1), 16, 3(1)
Gold Control (Reforms, Fees and Miscellaneous Matters) Rules, 1968 — Rule 4
Income Tax Act, 1961 — Section 132

Citation : (1981) 20 CTR 328 : (1981) ILR (Mad) 205 : (1981) 130 ITR 81

Hon'ble Judges : S. Padmanabhan, J

Bench : Single Bench

Advocate : K. Srinivasan, for the Appellant; K.N. Balasubramaniam, for the Respondent

Judgement

Padmanabhan, J.—The petitioner, Seshammal, the widow of late Rathinaswamy Chettiar, has prayed for the issue of a writ of mandamus

directing the respondents to release 21,660 gms. of gold jewellery seized from her residence on September 3, 1972.

2. The facts of the case may be briefly set out as follows. The late Rathinaswamy Chettiar was carrying on business in gold and gold jewellery

under the name and style of Sri Nataraja Vilas Jewellery Hall at Chidambaram. He died on November 7, 1971. Thereafter, the business was being

carried on by his legal heirs. On September 3, 1972, the intelligence wing of the I. T. Dept. searched the residence and business premises of the

petitioner. They seized about 21 kgs. of old and new gold jewellery and primary gold worth about Rs. 4,48,319. The ITO thereafter passed a

summary order under s. 132(5) of the I. T Act. He determined the total income at Rs. 6,90,390 and the tax liability at Rs. 6,30,775. While so, on

October 8, 1975, the President of India promulgated the Voluntary Disclosure of Income and Wealth Ordinance, 1975. The Ordinance was

subsequently replaced by the Voluntary Disclosure of Income and Wealth Act, 1976 (8 of 1976) (hereinafter referred to as ""the Act""). The

petitioner filed voluntary returns as per ss. 14 (1) and 15 of the Act. She also filed the necessary declarations in Forms B and C to the

Commissioner of Income Tax, Tamil Nadu-V. The petitioner paid a sum of Rs. 3,11,740, being the tax thereon as provided under s. 5 of the Act,

i.e., 50% before March 31, 1976, and the balance on April 19, 1976. The petitioner also informed the Asst. Collector of Central Excise,

Pondicherry, and forwarded to him extracts of the entry in G. S. 10 regarding the gold and gold ornaments owned or possessed by her and

declared under the Act. The petitioner further complied with all the formalities required under s. 16A of the Act. The petitioner then requested the

Deputy Director of Inspection, I. T., to release the gold and gold jewellery seized from her premises. On December 18, 1976, the Deputy

Director of Inspection wrote to the petitioner that the gold and gold jewellery would be released on January 3, 1977. However, the gold and gold

jewellery were not released. When the petitioner''s representative met the Deputy Director of Inspection, I. T., he was told that the second

respondent, viz., the Collector of Central Excise (Gold), Madras, had not given his concurrence for the release. In these circumstances, the

petitioner has filed this writ petition for the issue of a writ of mandamus to the respondents directing them to release the gold and gold jewellery

seized from her.

3. The first respondent, Commissioner, has stated that there was a search of the petitioner''s premises on September 3, 1972, by the intelligence

wing of the I. T. Dept. During the search, jewellery of the value of Rs. 4,28,319 and cash of Rs. 20,000 were seized. Thereafter, an order was

passed by the ITO, Circle-I, Cuddalore, by which he determined the total income at Rs. 6,90,000 and tax demanded at Rs. 6,30,775. The first

respondent has categorically admitted that the petitioner did file a declaration have been paid by the assessee. The first respondent has further

stated that he is ready and willing to abide by any order that may be passed by this court with regard to the gold and gold jewellery seized by the I.

T. Dept.

4. The second respondent, the Collector of Central Excise (Gold), Madras, has in his counter-affidavit stated that in all 24,950.500 gms. of gold of

purity of 14 to 22 carats in the case of ornaments and primary gold of 20 to 22 carats of the value of Rs. 12,10,408 were seized from the

petitioner. According to the second respondent, since the gold and gold jewellery had been seized as early as September 3, 1972, there was no

question of any voluntary disclosure of the gold being made by the petitioner under the Act. According to the second respondent, the petitioner

had not submitted a declaration under s. 16(7) of the Gold (Control) Act. The petitioner had clearly violated the provisions of the Gold (Control)

Act and consequently the gold and gold jewellery were liable for confiscation under s. 71 of the Gold (Control) Act. The second respondent has

further added in para. 7 of the affidavit that Rathinaswamy Chettiar had made a declaration of only 6,394 gms. of gold and gold jewellery.

According to the second respondent, the declaration under the Voluntary Disclosure Scheme could not be deemed to be a declaration under the

Gold (Control) Act. In view of the fact that the gold had been discovered and seized long prior to the commencement of the Act, there can be no

disclosure. On September 3, 1972, the Central Excise Range Officer, Chidambaram, who had associated himself with the seizure made by the I.

T. authorities, sent a report to the Assistant Collector of Central Excise of what took place at the time of seizure. The Asst. Collector of Central

Excise instructed the range officer on September 8, 1972, to record a statement from the party. The Range Officer, Chidambaram, informed the

Asst. Collector that the party had already made a statement direct to the Asst. Collector. In view of this proceeding, which had been initiated by

the central excise authorities, the petitioner could not claim immunity from the provisions of the Gold (Control) Act and the Customs Act. In these

circumstances, it is submitted that the petitioner is not entitled to the issue of a writ of mandamus.

5. Mr. K. Srinivasan, the learned counsel for the petitioner, made the following submissions. There was a search and seizure of the petitioner''s

premises on September 3, 1972, by the intelligence wing of the I. T. Dept. when 21,660 gms. of gold and gold jewellery were seized. Thereafter, consequent on the promulgation of the Voluntary Disclosure Scheme, the petitioner made a declaration on May 28, 1976. On the basis of the

disclosure made by the petitioner, the ITO, Cuddalore-1, passed an order determining the petitioner''s total income at Rs. 6,90,000 and levied a

tax liability of Rs. 6,30,775. The said tax has also been paid by the petitioner. Thus, the I. T. authorities have accepted the voluntary disclosure

made by the petitioner under the Act and they have ordered the release of the gold and gold jewellery to the petitioner. However, the second

respondent intervened and has prevented without jurisdiction the release of the gold and gold jewellery. Mr. Srinivasan contended that the

petitioner had complied with all the formalities of the Act and had made a declaration under s. 16A of the Act. Consequently, the petitioner would

be entitled to immunity from being proceeded against for violation of any of the provisions of the Gold (Control) Act. In this view, the learned

counsel contended that the petitioner would be entitled to the release of the gold and gold jewellery.

6. Mr. K. N. Balasubramanian, the learned counsel for the second-respondent, made the following submissions. (1) The petitioner had not

disclosed the entire gold and gold jewellery seized from her. Late Rathinaswamy Chettiar had declared only a quantity of 4,627.500 gms. of gold

ornaments in the capacity of a licensed dealer and consequent on the transfer of the gold dealer''s licence to his legal heir, his son, R.

Balasubramaniam, had declared a quantity of 1,766.500 gms. of gold jewellery on August 16, 1975. Thus, the total declaration came to only

6,394.00 gms. In the submission of Mr. K. N. Balasubramanian inasmuch as a full and proper disclosure has not been made by the petitioner she

would not be entitled to the claim for immunity from the penal provisions of the Gold (Control) Act. (2) At the time, the petitioner made the

declaration she did not own, possess or control the gold and gold jewellery. They had already been seized by the I. T. Dept. and the I. T.

authorities were in possession and control of the gold and gold jewellery. Hence, in respect of such gold and gold jewellery the petitioner could not

have made a voluntary disclosure under the Act. (3) The petitioner had not complied with s. 16A of the Act and had not made a declaration as

contemplated under s. 16A of the Act. (4) The gold and gold jewellery had been seized under the Gold (Control) Act by the I. T. authorities prior to the declaration made by the petitioner under the Act. Consequently, the case fell under s. 16 (5) of the Gold (Control) Act and, therefore, the

petitioner''s claim for immunity could not be countenanced. Even otherwise, the central excise authorities had associated themselves with the I. T.

authorities in the search and seizure conducted on September 3, 1972. Therefore, the seizure must be deemed to have been made by the central

excise authorities also. The range officer having made a report to the Asst. Collector, Central Excise, and the latter having asked the range officer

to get a statement from the petitioner would show that some other proceeding had been initiated prior to the voluntary disclosure said to have been

made by the petitioner. In the circumstances, the petitioner will not be entitled to the immunity claimed by her in view of s. 16 (5) of the Gold

(Control) Act.

7. It is admitted by the first respondent, the Commissioner, that there was a search of the premises of the petitioner on September 3, 1972, when

gold and gold jewellery of the value of Rs. 4,48,319 and cash of Rs. 20,000 were seized. It is also admitted that the ITO, Circle-I, Cuddalore,

determined the total income of the petitioner at Rs. 6,90,000 and fixed the tax liability at Rs. 6,30,775. There is no doubt that the petitioner has

paid the tax of Rs. 6,30,775. It is equally admitted by the first respondent that the petitioner filed a declaration under ss. 14 and 15 of the Act and

that on the basis of the declaration a relevant assessment has been completed and the tax due as per the declaration has been paid by the assessee.

It is equally not disputed by the first respondent that, in the first instance, he ordered the release of the gold and gold jewellery to the petitioner on

the basis that she made voluntary disclosure as required under the Act and the necessary assessment has been made and tax paid by the petitioner.

In view of these admitted facts, there is no force in the contention of Mr. K. N. Balasubramanian that there has not been a full disclosure of the

entire quantity of 21,660 gms. of gold and gold jewellery by the petitioner and, therefore, she would not entitled the immunity from the penal

provisions of the Gold (Control) Act. The petitioner has categorically stated in the affidavit filed in support of the writ petition that 21,660 gms. had

been seized by the I. T. Dept. on September 3, 1972, and, thereafter, after the promulgation of the Act, the petitioner had made a disclosure to the full extent before 1st January, 1976. The first respondent has not contradicted the statement made in the affidavit of the petitioner but has, on the

other hand, admitted the plea of the petitioner that she had made a voluntary disclosure assessed the petitioner to Income Tax and wealth-tax and

that the tax had been duly paid by the petitioner. I, therefore, hold that the petitioner had made a voluntary disclosure as required by ss. 14 and 15

of the Act and that she has also paid the tax to which she had been assessed by the I. T. and W. T. authorities.

8. The argument that in view of the fact that, at the time, the petitioner made the voluntary disclosure, she did not own, possess or control the gold

and gold jewellery in respect of which she had made the voluntary disclosure since as on that date the gold and gold jewellery had already been

seized by the I. T. Dept., has no substance and has to be overruled. In W. P. No. 3710 of 1977 P.P. Kanniah Vs. Income Tax Officer, Central

Circle I, Madras and Another, , I have held that till the I. T. authorities exercised the power of sale conferred on them under s. 132B(1)(iii) and

sold the gold and gold jewellery seized under s. 132 of the I. T. Act, it could not be said that the gold and gold jewellery had ceased to be the

property of the person from whom they had been seized. In other words, I have held that till the power of sale is exercised by the I. T. authorities,

the gold and gold jewellery could only be said to be under distraint in the hands of the I. T. authorities. Therefore, from the mere fact that the gold

and gold jewellery had been seized in 1972, long prior to the promulgation of the Act, it could not be said that the petitioner could not have made

any voluntary disclosure as provided under the Act. Further, when once the first respondent has accepted the disclosure made by the petitioner

and passed appropriate orders it would not be open to the second respondent to contend that there has not been any valid disclosure by the

petitioner in terms of the Act.

9. The next point that arises for consideration is whether the petitioner will be entitled to immunity from penalty, prosecution, etc., under the

provisions of the Gold (Control) Act and the Customs Act. Mr. Balasubramanian argued that the gold and gold jewellery seized by the I. T. Dept.

would be liable for confiscation both under the provisions of the Gold (Control) Act and the Customs Act. Section 16(1) of the Act reads as follows :

16. Immunity from penalty, prosecution, etc., under certain Acts. -

(1) Where -

(a) the voluntarily disclosed income declared under sub-section (1) of section 3 or any part thereof, or

(b) the net wealth, or the assets the value whereof is, declared undersub-section (1) of section 15 or any part of such net wealth or assets,

is or are represented by gold, then, notwithstanding anything contained in the Customs Act, 1962, or the Gold (Control) Act, 1968, such gold shall

not be liable to confiscation under either of the said Acts and the person making the declaration shall not be liable to imposition of any penalty or

infliction of any punishment under either of the said Acts for any act or omission in relation to such gold, if he fulfils the following conditions, namely

:-

(A) in a case where the gold is owned, possessed, held or controlled by the person making the declaration (such gold being owned, possessed,

held or controlled by him in his capacity as a licensed dealer), necessary entries are made by him in the accounts, registers and documents

maintained under the Gold (Control) Act, under intimation to the Gold Control Officer of the rank of an Assistant Collector of Central Excise or of

Customs before the 1st day of February, 1976, and such other steps as are necessary for him to comply with the requirements of that Act in

relation to such gold are taken by him before that date;

(B) in any other case, -

(i) where the gold is an article or ornament or both and the weight of such article or ornament, or the aggregate weight of both, together with the

weight of any other gold (being an article or ornament) owned, possessed, held or controlled by him, exceeds the limits specified in sub-section (5)

of section 16 of the Gold (Control) Act, such article or ornament or both, as the case may be, is or are declared in the form prescribed under sub-

section (1), and in the manner specified in sub-section (8), of that section before the 1st day of February, 1976.

(ii) where the gold is primary gold, such gold is either sold to any licensed dealer under intimation to the Gold Control Officer of the rank of an

Assistant Collector of Central Excise or of Customs before the 1st day of February, 1976, or is made into ornaments and a declaration in this

behalf is made in the form prescribed under sub-section (1), and in the manner specified in sub-section (8), of section 16 of the Gold (Control)

Act, before that day.

10. From the above, it can be seen that s. 16 (1) (A) applies in the case of licensed dealers and s. 16 (1) (B) (i) and (ii) applies in all other cases,

and in order to get immunity from penalty, prosecution, etc., under the Customs Act and the Gold (Control) Act, a licensed dealer should satisfy

the following conditions : (1) he must have made a voluntary disclosure of his income under s. 15 (1) of the Act. (2) The gold in respect of which

the declaration is made must be owned, possessed or controlled by him in his capacity as a licensed dealer. (3) He must have made necessary

entries in the accounts, registers and documents maintained under the Gold (Control) Act. He must have been given intimation to the Gold Control

Officer of the rank of Asst. Collector of Central Excise or of Customs before the 1st day of February, 1976. He must have taken steps as are

necessary to comply with the requirements of the Act before the 1st February, 1976. Further, the dealer has also to comply with the requirements

of the Gold (Control) Act provides as follows :

Section 16 (1) of the Gold (Control) Act provides as follows :

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."" (proviso omitted)

11. Section 16 (8) of the Gold (Control) Act reads as follows :

Every declaration made under this section shall be made in triplicate, of which one copy shall be authenticated and signed by the Gold Control

Officer and thereafter shall be returned to the person making the declaration and the copy so returned shall be retained by such person as evidence

of the declaration made by him under this section.

12. Section 16 (9) of the Gold (Control) Act reads as follows :

Every declaration made under this section shall be kept by the Gold Control Officer in safe custody and the particulars thereof shall be entered in

a register to be maintained for this purpose.

13. Section 16 (11) of the Gold (Control) Act read as follows :

No person shall own or have in his possession, custody or control any quantity of gold which is required to be included in a declaration unless

such gold has been included in a declaration or further declaration, as the case may be :

Provided that nothing in this sub-section shall apply until the expiry of the period within which a person is entitled to made a declaration or further

declaration.

14. It is, therefore, seen that in order to get immunity from the penal provisions of the Gold (Control) Act, it is necessary for a person who takes

advantage of the Act not only to make a declaration under s. 16 of the Act but also comply with the requirements of the Gold (Control) Act, that is

to say, he or she will have to make a declaration in accordance with s. 16 (8) of the Gold (Control) Act.

15. Rule 4 of the Gold Control (Forms, Fees and Miscellaneous Matters) Rules, 1968, reads as follows :

4. (1) The declaration or further declaration, referred to in section 16, shall be in Form No. G. S. 3.

(2) The register referred to in sub-section (9) of section 16 shall contain the following particulars, namely :-

1. Serial number.

2. Date of receipt of the declaration.

3. Name and address of the person making the declaration.

4. Quantity of gold declared (including previous declaration, if any).

16. From No. G. S. 3 prescribed says that the form is only intended for being used by persons other than licensed dealers. The learned Central

Government standing counsel was not able to draw my attention to any prescribed form which has to be used by a licensed dealer for making a declaration under s. 16 (8) of the Gold (Control) Act. No form other than G. S. 10 and 17 to be filed by a licensed dealer has been brought to my

notice by the learned Central Government standing counsel.

17. The question for consideration is whether the petitioner herein has complied with all the requirements of s. 16 of the Act as well as s. 16 (8) of

the Gold (Control) Act. On January 5, 1976, the petitioner''s son, Balasubramanian, wrote a letter to the Asst. Collector of Central Excise,

Pondicherry, enclosing the return in Form No. G. S. 17 for the quarter ending December 31, 1975. This return was submitted in accordance with

the provisions of r. 15 of the Gold Control (Forms, Fees and Miscellaneous Matters) Rules, 1968, which rules were framed in accordance with s.

56 of the Gold (Control) Act which stated that stated that every licensed daler, every licensed refiner and every certified goldsmith shall furnish to

the Administrator such returns as to the quantity, description and other prescribed particulars of gold owned, possessed, held or controlled by him,

in such form and within such time as may be prescribed and different returns may be prescribed for different classes of licensed dealers or refiners

or certified goldsmiths. Section 56 (2) provides that every return shall be made in triplicate of which one copy shall be authenticated and signed by

the Gold Control Officer and thereafter shall be returned to the dealer or, as the case may be, the refiner, and the copy so returned shall be

retained by the dealer or refiner as evidence of the return made by him under the said section. The returns submitted by the petitioner stated that

21,660 gms. of gold jewels and primary gold (21,325 plus 335) taken away by the I. T. Dept. had been included as per the Voluntary Disclosure

Scheme of 1975. It is not disputed that the return submitted by the petitioner was in form G. S. 17. It is equally not disputed that the petitioner''s

son, Balasubramanian, did send the communication dated January 5, 1976, enclosing the quarterly return for the period ended December 31,

1975, in form No. G. S. 17. On receipt of the above letter, the Asst. Collector o f Central Excise, Pondicherry, sent communication No. C. No.

XVII/14/2/76/ G. C. II dated May 28, 1976. The subject-matter of the letter was stated to be ""Gold control - disclosure of gold, gold ornaments

under the Voluntary Disclosure of Income and Wealth Scheme, 1975 - regarding"". The letter was addressed to the petitioner''s son, Balasubramanian. The letter acknowledged Balasubramanian''s letter furnishing an extract of the entries of voluntary disclosure statement. It further

stated that as per the Govt. of India press note, Balasubramanian was required to take into account as dealer''s account. A copy of the letter was

also forwarded to the Range Officer, Chidambaram, for information and necessary action. This was followed by communication C. No.

XVII/14/2/76 G. C. II dated June 26, 1976, addressed to the Range Officer, Chidambaram, with a copy marked to the petitioner''s son,

Balasubramanian. It called the attention of the range officer to the letter dated May 28, 1976, and further called upon the Range Officer,

Chidambaram, to submit the required report. In the copy marked to Balasubramanian he was asked to report whether the primary gold had been

accounted for as receipt in the dealers'' account or not. Form the register placed before me by the learned counsel for the petitioner, it was evident

that on July 16, 1976, the central excise authorities verified the entries in the book and signed the same vouchsafing the declaration made by the

petitioner. Thereafter, in December, 1976, the petitioner wrote to the Deputy Director of Inspection, Madras, requesting him to release the gold

and gold jewellery at the earliest date. The said letter informed the Deputy Director of Inspection that the petitioner had brought the articles seized

in her records and had also informed the Asst. Collector of Central Excise, Pondicherry. It further stated that the Central Excise Officer,

Chidambaram, had verified the entries in the books and affix ed his signature in token thereof. On December 18, 1976, the ITO, Cuddalore, wrote

a letter to the chartered accountant of the petitioner to send the duly authorised representative of the petitioner on January 3, 1977, at Tiruchi to

take delivery of the jewellery. On March 12, 1977, the petitioner wrote another letter to the Commissioner of Income Tax, Madras, the first

respondent herein. The said letter reiterated the fact that a copy of the entries in the G. S. 10 book had been forwarded to the Asst. Collector of

Central Excise, Pondicherry, that the same had also been included in the quarterly return to be filed with the central excise authorities and that

under the direction from the Asst. Collector of Central Excise, the Range Officer, Chidambaram, had verified the entries on July 16, 1976, and

initialed the form No. G. S. 10 book. The letter further stated that in view of the fact that the petitioner had complied with all the formalities under the voluntary disclosure scheme, the articles seized from the petitioner might be released. This was followed by the communication dated March

20, 1977, addressed by the petitioner to the Deputy Collector of Central Excise (Gold), Madras. This letter also detailed the various

communications sent by the petitioner to the Asst. Collector or Central Excise. Not receiving reply to this letter, the petitioner sent another

communication dated May 21, 1976, to the Commissioner, the Deputy Director of Intelligence, I. T. Dept. and the Collector of Central Excise,

Madras.

18. Mr. Balasubramanian contended that no proper declaration had been made to the Gold Control Officer as required by the Gold (Control) Act.

The learned counsel went to the extent of arguing that merely because a range officer of the central excise department had signed in the books of

the petitioner, it could not be said that a proper declaration had been made by the petitioner. The entire argument of the learned counsel, in my

opinion, is misconceived. The petitioner''s son, Balasubramanian, had forwarded the extract of G. S. 10 to the Asst. Collector of Central Excise,

Pondicherry, as early as on January 5, 1976. The forwarding letter clearly stated that the entry in G. S. 10 included the gold and gold jewellery

declared by the petitioner as owned and possessed under the Voluntary Disclosure Scheme of 1975 before the first respondent. It is not disputed

that the Asst. Collector of Central Excise, Pondicherry, was the Gold Control Officer within the meaning of the Gold (Control) Act. The Asst.

Collector of Central Excise, Pondicherry, took follow up action on the letter dated January 5, 1976, sent by Balasubramanian and directed him to

bring 335 gms. of primary gold in the dealers'' account. He also directed the Range Officer, Chidambaram, to verify whether the necessary entries

have been made in the books of the petitioner. The Range Officer, Chidambaram, inspected the books and in token thereof has initialled the same.

It is also not disputed and it cannot be disputed that the quarterly returns in form G. S. 17 had been sent by the petitioner to the Superintendent of

Central Excise. The said return for the quarter ending December 31, 1975, contained the statement that 21,660 gms. of gold and gold jewellery

seized by the I. T. Dept. had been included as per the Voluntary Disclosure Scheme of 1975. A copy of the return had been forwarded to the

Asst. Collector of Central Excise and the said copy is on the file of the department. If really what was done by the petitioner was not a proper

declaration as required by s. 16 of the Act or by the provisions of the Gold (Control) Act, one would have expected the Asst. Collector of Central

Excise, Pondicherry, to have informed the petitioner as to the further action to be taken by the petitioner pursuant to the voluntary disclosure made

under the Voluntary Disclosure Scheme of 1975. This should be particularly so when in reply to the letter dated January 5, 1976 from

Balasubramanian, the Asst. Collector of Central Excise had written to him on May 28, 1976, with reference to his letter dated January 5, 1976,

calling upon him to take into account as a dealer the primary gold weighing 335 gms. and made necessary entries as receipts in the dealers''

account. In this case, the petitioner had made a full and voluntary disclosure as required by the Act. She had made the necessary entries in the

registers maintained by her under the Gold (Control) Act. There is the further fact that the entries made have been verified and counter-signed by

the Range Officer, Chidambaram. The petitioner had further sent extracts of G. S. 10 and copy of G. S. 17 return to the Asst. Collector of Central

Excise who as already stated took note of the fact of the declaration made by the petitioner under the voluntary disclosure scheme. There is the

further fact that the learned Central Government standing counsel did not being to my notice any particular form apart from G. S. 10 and 17 which

had to be made use of by a licensed dealer in making a declaration under the Gold (Control) Act. In the circumstances, I am satisfied that the

petitioner had complied with the provisions of s. 16 of the Act as well as s. 16 of the Gold (Control) Act.

19. What remains to be considered is the other point of Mr. Balasubramanian''s argument that the petitioner will not be entitled to immunity by

reason of the provisions of s. 16(5) of the Act. The first limb of Mr. Balasubramanian''s contention based on s. 16 (5) is that the gold had been

seized under the Gold (Control) Act before the petitioner made a declaration under ss. 3 (1) and 15 (1) of the Act. The argument of Mr.

Balasubramanian is that the search and seizure was made jointly by the I. T. Dept. as well as the central excise authorities and since both the

authorities could not retains possession of the seized gold and gold jewellery, the possession was handed over to the I. T. authorities. This argument is based on the fact that a range officer of Central Excise and an Inspector of Central Excise assisted the I. T. authorities at the time of

search and seizure of the gold and gold jewellery on September 3, 1972. Section 58 of the Gold (Control) Act states that any Gold Control

Officer authorised in this behalf by the Administrator may, if he has any reason to suspect that any provision of this Act has been, or is being, or is

about to be contravened, enter and search, at any reasonable time, any refinery or the business premises of a licensed dealer or a certified

goldsmith, and any Gold Control Officer, not below the rank of a Superintendent of Central Excise, empowered in this behalf by the Central Govt.,

may, if he has any reason to suspect that any provision of this Act has been, or is being, or is about to be contravened, authorise any officer of the

Government to enter and to search any premises, vaults, lockers, or any other place, whether above or below ground, or may himself do so. It is

not the case of the respondents that the search was made by the gold control authorities in terms of s. 58 of the Gold (Control) Act. On the other

hand, it is specifically admitted that the gold was seized by a public official in pursuance of p owers vested in him under the revenue law. The

counter-affidavit filed for the first respondent clearly states that the search was made by the intelligence wing of the I. T. Dept. This is further

strengthened by the letter dated 13th September, 1972, addressed by the Asst. Director of Inspection to the Asst. Controller of Central Excise by

which information had been given to the Asst. Collector of Central Excise that a search under s. 132 of the I. T. Act was conducted by the Asst.

Director of Inspection on September 3, 1972. The show-cause notice issued by the Asst. Collector of Central Excise, Pondicherry, on March 7,

1978, to the petitioner also states that the I. T. authorities conducted a search of the residence of late Rathinaswamy Chettiar and took delivery of

gold and gold ornaments. In the show-cause notice, it is not stated that the gold and gold ornaments were seized by the central excise authorities

prior to the declaration made by the petitioner under the voluntary disclosure scheme. In fact, the said show-cause notice called upon the petitioner

and her sons to show cause why the gold and gold ornaments ""originally seized by the I. T. authorities and then received from them by the Central

Excise dept. should not be confiscated"". The letter dated September 4, 1972, sent by the range officer, Central Excise to the Asst. Collector of

Central Excise, Pondicherry, to which my attention was drawn by Mr. Balasubramanian only states that the said range officer and an Inspector of

Central Excise had assisted the I. T. authorities in the seizure. Even in the counter-affidavit filed by the second respondent it is not his case that the

gold and gold jewellery were seized by the Central Excise authorities and that consequently the petitioner is not entitled to immunity by virtue of s.

16 (5) of the Act.

20. The second limb of the contention of Mr. Balasubramanian based on s. 16 (5) of the Act is that at the time the voluntary disclosure was made,

a proceeding under the Gold (Control) Act was pending before the gold control authorities. This contention had only to be stated to be rejected.

Support for this contention is sought to be derived from the letter dated September 4, 1972, addressed by the range officer, Central Excise, to the

Asst. Collector of Central Excise, Pondicherry, by which the latter informed the former about the seizure of gold made by the I. T. authorities on

September 3, 1972, and the further letter sent by the Asst. Collector of Central Excise, Pondicherry, to the Collector of Central Excise, Madras,

on September 7, 1972. The learned counsel also relied upon the fact that the range officer had been asked to take a statement from the petitioner.

I do not think that merely from these, it can be said that any proceeding was pending in connection with the gold before the date of declaration

made by the petitioner under the voluntary disclosure scheme. This is fortified by the fact that the Asst. Collector of Central Excise, Pondicherry,

accepted without demur the intimation made by Balasubramanian, the petitioner''s son, that necessary declaration had been made in respect of the

gold under the voluntary disclosure scheme. Further, the show-cause notice itself is issued long after the date of declaration made under the

voluntary disclosure scheme. In the counter affidavit filed by Mr. Arulraj, there is no allegation that any proceeding under the Gold (Control) Act

was pending at the time the petitioner made a declaration under the voluntary disclosure scheme. On the other hand, it is categorically admitted in

para. 5 of the affidavit filed by Mr. Arulraj on January 12, 1978, that ""the department has at present had initiated proceedings. The proceedings

have been initiated in February, 1977"". In these circumstances, there is no force in the contention of Mr. Balasubramanian that a proceeding was pending at the time the petitioner made a declaration under the voluntary disclosure scheme and, consequently, the petitioner will not be entitled to

immunity under s. 16 (5) of the Act.

21. The net result of the above discussion is that the petitioner, having made a voluntary disclosure of the income and wealth under ss. 3 (1) and 15

(1) of the Act, and having complied with the provisions of s. 16 of the Act and s. 16 of the Gold (Control) Act will be entitled to immunity from the

penal provisions under the Gold (Control) Act and the Customs Act. In the right of this finding, the second respondent is not entitled to take any

proceedings against the petitioner for violation of any of the provisions of the Gold (Control) Act in respect of the gold and gold jewellery seized

from the petitioner on September 3, 1972. The petitioner is entitled to a release of the said gold and gold jewellery. There is some dispute about

the weight of gold seized from the petitioner. That is a matter of record as evidenced by the seizure report of the I. T. Dept. The petitioner will be

entitled to a release of the gold and gold jewellery seized under the search made on September 3, 1972, in accordance with the seizure report. The

writ petition is allowed and a writ of mandamus will issue directing the respondents to release the gold jewellery seized from the petitioner on

September 3, 1972. There will be no order as to costs.