(1991) 04 DEL CK 0010

In the Delhi High Court

Ram Singh Manmohan Singh and others APPELLANT

Vs

Union of India and others RESPONDENT

Date of Decision : 16-04-1991

Acts Referred:

Citation : (1991) 04 DEL CK 0010

Hon'ble Judges : M.K. Chawla, J

Bench : Single Bench

Advocate : D.K. Kapur and B.D. Sharma, for the Appellant; Rajinder Dutt, for the Respondent

Judgement

M.K. Chawla, J.—In this writ petition, the petitioner has challenged the authority of the Assistant Collector (Preventive), Central Excise Collectorate, Chandigarh, to issue warrants for the search of the house of the petitioner, and the competency of the Deputy Collector to order confiscation of ornaments or to impose a personal penalty.

2. The circumstances leading to the search of the premises of petitioner No. 2 and the consequent recovery of the gold ornaments are not in dispute. On September 27, 1974, armed with the authority of the search warrant issued by the Assistant Collector (Preventive), Central Excise Collectorate, Chandigarh ,Shri Kishan Singh, Inspector, Customs and Excise, conducted the search of the house of the petitioner in the presence of two witnesses. He prepared the panchnama (exhibit P-1). On that very day, the statement of S. Ram Singh, petitioner No. 2, was recorded. On February 18, 1975, the Deputy Collector of Central Excise issued notice to the petitioner to show cause as to why the said 633 grams of gold ornaments be not confiscated u/s 71 of the Gold (Control) Act, 1968, and a penalty be imposed for contravention of sections 6(2), 16(7) and 27(7)(b) of the Gold (Control) Act, 1968. The petitioner sent a reply alleging therein that a total number of 26 items weighing 377.400 grams out of the seized gold ornaments belonged to varies persons who had pawned the same with the petitioner. These ornaments, even though pawned only 2/3 days prior to their seizure, the entire

could not be posed in "ghirvi register" though the same existed in the daily cash book. The remaining ornaments had been delivered to the petitioner at his residence on the evening of September 26, 1974, for minor repairs by one Darshan Singh and others of Patiasla. All the gold items thus are not liable to seizure. In support of the reply, the affidavits of the person who had pawned the jewelry items and the person who had come for repairs were attached.

3. Learned Deputy Collector of Customs and Central Excise was not satisfied with the Explanation and by order dated September 3, 1976, seized the confiscated the gold ornaments u/s 71 of the Gold (Control) Act, for contravention of sections 6(2), 16(7) and 27(7)(b) of the Gold (Control) Act, 1968 hereinafter referred to as "the Act"). The petitioner, however, was given the option to redeem these ornaments on payment of redemption fine of Rs. 10,000. A personal penalty of Rs. 5,000 was also imposed on the firm, Ram Singh Manohar Singh, Gold Jewellers, u/s 74 of the Act.

4. Aggrieved by the order, the petitioner filed an appeal which was dismissed by the Collector on March 24, 1977. However, in the revision before the Central Government, the petitioner succeeded only in the reduction of the amount of redemption fine from Rs. 10,000 to Rs. 7,500 and the penalty from Rs. 5,000 to Rs. 3,000. It was only thereafter that the petitioner discovered that the Assistant Collector had no authority to issue the search warrant and the Deputy Collector was not competent to pass the adjunction order.

5. The respondents'' defense as disclosed in the counter is that, in accordance with Notification S. O. No. 3118, the Central Government has empowered every Gold Control Officer of and above the rant of Superintendent of Central Excise, to enter and search or to authorise any officer of the Government to enter and search any premises, vaults, lockers or any other places whether above or below ground. The Assistant Collector thus was fully empowered to issue the search warrant for the search of the residential premises of the petitioner u/s 58 of the Gold (Control) Act. As regards the imposition of penalty or orders of confiscation by the Assistant Collector/Deputy Collector, the case set up is that u/s 78 of the Act, the Deputy Collector was empowered to confiscate the gold the value of which does not exceed Rs. 1 lakh. On this aspect, reliance is placed on the Notification No. S. O. 985(E) dated December 27, 1980 (R-2).

6. From a careful perusal of the counter, I find that the stand of the respondent is without substance. In clause (1) of section 2, the Gold Control Officer is defined to mean "a Gold Control Officer appointed u/s 4 of the Act". Section 4 lays down that the Central Government shall, by notification, appoint an administrator for carrying out the purposes of this Act. Sub-section (2) empowers the Central Government to appoint as many person as it thinks fit to be Gold Control Officers by issuing notification in this behalf, to enforce the provision of the Act. Sub-section (2) of section 58 lays down that any Gold Control Office, not below the rank of a Superintendent of Central Excise, empowered in this behalf by the Central Government, 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 Government to enter and to search any premises, vaults, lockers or any other place, whether above or below ground or may himself do so.

7. The cumulative effect of the various provisions of this Act is that the Central Government, by a notification ,can appoint any person to be a Gold Control officer for the purpose of carrying out search but not an officer below the rant of Superintendent of Central Excise.

8. In this case, in pursuance of information, the preventive staff of the Customs Collectorate searched the residential premises of petitioner No. 2, Shri Ram Singh, at Patiala on September 27, 1974, under the authority of a search warrant issued by the Assistant Collector. As a result of this search, 43 pieces of gold ornaments weighing 633 grams valued at Rs. 33,000 were recovered. The raid was conducted under the supervision of one Shri Kishan Singh, Inspector.

9. The question that calls for consideration on the first aspect is as to whether the Assistant Collector was competent to issue a warrant and to authorise Shri Kishan Singh, Inspector, to conduct the speech .As observed earlier, the respondent has placed reliance on annexure R-1 which appears to be sort of notification without bearing any date. It reads as under :

"In exercise of the powers conferred by sub-section (2) of section 58 of the Gold (Control) Act, 1968 (45 of 1968), and, in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue and Insurance), No. S. O. 2321, dated 12th June, 1968, the Central Government hereby empowers every Gold Control Officer of and above the rant of the Superintendent Central Excise to enter and search or to authorise any officer of the Government to enter and to search any premises, vaults, lockers or any other place whether above or below ground."

10. This notification, to my mind, is of no avail to the respondents as it does not mention the date of its issuance so as to bring the incident of search in September, 1974, within its scope. In spite of repeated insistence, learned counsel of the respondent expressed his inability to fix the date of the issuance of this notification. However, in the supplementary affidavit, learned counsel for the respondent tried to overcome this difficulty by placing on record a notification u/s 4 of the Gold (Control) Ordinance, 1968, in respect of the appointment of Gold Control Officer (annexure R/X). This Notification No. S. O. 2319, dated June 29, 1968, reads as under :

"In exercise of the powers conferred by sub-section (2) and (7) of section 4 of the Gold (Control) Ordinance, 1968, the Central Government hereby appoints all officers of the Central Excise, of and above and rank of sub- inspectors and all officers of customs, of and above the rank of preventive officers, as Gold Control Officers and specifies that every Gold Control Shall, subject to such limitations, restrictions and conditions as had been imposed by or under Part XII-A of the defense of India Rules, 1962, exercise the powers and discharge the functions which were exercised or discharged under that part by all officers of Central Excise or of customs, immediately before the commencement of the Gold (Control) Ordinance, 1968."

11. In order to have the full impact of this notification one has first to examine the provisions or rule 126L appearing in Part XII-A of the defense of India Rules, 1962. Sub-rules (2) and (3) are relevant for our purpose. The rules read :

"(2) any person authorised by the Control Government by writing in this behalf may -

(a) enter and search any premises, not to a refinery or establishment referred to in sub-rule (1), vaults, lockers or any other place whether above or below ground ;

(b) seize any gold in respect of which he suspects that any provision of this part has been or is being or is about to be contravened, along with the package, covering or respectable ,if any, in which such gold is found and thereafter take all measures necessary for their safe custody.

(3) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating to search and seizure shall, so far as they are applicable, apply in relation to search and seizure made under this rule."

12. In the present case, the search was ordered by the Assistant Collector and the authority was delegated to an Inspector to carry out the search orders. The respondent unfortunately, has not placed any material on record to suggest that the Assistant Collector was specifically authorise by the Central Government in writing to effect a search or further rot delegate his power to the inspector and if at all he was authorised, then subject to which, limitation, restrictions and conditions. Even this notification, sought to be brought on record by the supplementary affidavit, is of no help to the respondents. The fact remains that, on this record, the respondents have failed to place any material to justify the authority of the Assistant Collector to issue the search warrant and to have it carried out by his subordinate on September 27, 1974.

13. On the second aspect also, the petitioners have a case. The value of the seized gold ornaments has been assessed at Rs. 33,000. This is clear from the panchnama (annexure P-1) and the statement of Ram Singh (annexure P-2). The show-cause notice, P-3, dated February 21, 1975, is based on the panchanama. In the counter, the respondents do not dispute this valuation. The order of the Collector confiscation the gold ornaments and imposing penalty is dated September 3, 1976. The respondents have placed reliance on the notification dated December 27, 1980 (exhibit R-2), wherein the Deputy Collector of Central Excise/Deputy Collector of Customs has been given the powers to adjudicate, confiscate and impose the penalty, etc., in respect of property the value of which does not exceed Rs. 1 lakh. A bare reading of this notification on the subject.

Prima facie, this notification does not cover the case of the petitioner inasmuch as the adjudication order of the Deputy Collector dated September 3, 1976, is prior in point of time of the issuance of this notification.

14. In order to overcome this difficulty, learned counsel for the respondent placed on record the copy of notification No. S. O. 2322, dated June 29, 1968(R/Y), by filing a supplementary affidavit. By virtue of this notification and imposition of penalty on Gold Control Officers of the ranks mentioned therein. The Deputy Collector of Central Excise and Customs were authorised to exercise these powers where the value of the gold liable to confiscation (where such gold is available for confiscation or not) does not exceed Rs. 25,000. By this notification, the Deputy Collector had the jurisdiction to adjudicate or confiscate the gold the value of which was not more than Rs. 25,000. In the present case, admittedly the value of the gold ornaments taken into possession at the time of the search was assessed at Rs. 33,000. Thus, the Deputy Collector had no jurisdiction to pass the order of confiscation or impose personal penalty on petitioner No. 2.

15. On both these counts, the respondents have failed to justify the search, seizure, the confiscation of the gold ornaments and imposition of penalty.

16. Before parting with this case, I have to hesitation to express the helplessness of the court in arriving at a correct conclusion even if it sincerely tries to do so. It is not disputed that since the coming into force of the Gold (Control) Act, 45 of 1968, hundreds of notifications have been issued form time to time, with a view to effectively implement the provisions of this Act and/or to cover up the lacunae when brought to the knowledge of the Department. Most of these notification available in the market. The officer of the respondent is supposed to maintain a record of such notification and place them before the court as and when required. I am sorry to observe that the officers of the respondent have not given the use importance which this case deserved and have not cared even to assist their counsel by bringing to his notice the appropriate notifications covering this case. The respondents were given numerous adjournments and ample opportunity to find out the relevant notifications authorising the Assistant Collector to order search and the Deputy Collector to adjudicate on the matter. Even the court was deprived of the opportunity to find out the relevant notification from their record. It may be that the office might not be in possession of the notifications issued from time to time or they intentionally avoided producing the same. I have no option but to condemn the attitude of the respondent-department and leave is at that.

17. In the result, the petition is accepted. The orders passed, vide annexures P-6, P-8 and P-10, are quashed. The respondents are directed to refund the amount of Rs. 7,500 and Rs. 3,000 imposes upon the petitioner as redemption charges and personal penalty. The criminal proceedings launched against the petitioner are also quashed.

