

(1989) 04 DEL CK 0028

In the Delhi High Court

Case No : Civil Writ Petition No. 663/81

Ram Singh Manmohan Singh

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 19-04-1989

Acts Referred:

Defence of India Rules, 1962 — Rule 126L, 126L(1), 126L(2), 126L(3)

Gold (Control) Act, 1968 — Section 16(7), 2, 27(7), 4, 58

Gold (Control) Ordinance, 1968 — Section 4, 4(2), 4(7)

Citation : (1989) 43 ELT 247

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 Dy. Collector to order confiscation of ornaments or to impose the 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 27th September, 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 (Ex. P-1). On that very day, the statement of S. Ram Singh, petitioner No. 2 was recorded. On 18th February, 1975, the Deputy Collector of the 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 the contravention of Section 6(2), 16(7) and 27(7)(b) of the Gold Control Act, 1968. The petitioner sent the reply alleging therein that a

total number of 26 items weighing 377.400 grams out of the seized gold ornaments belonged to various persons who had pawned the same with the petitioner. These ornaments, even though were pawned only 2/3 days prior to their seizure but the entries could not be posted 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 26th September, 1974 for minor repairs by one Darshan Singh and others of Patiala. All the gold items thus, are not liable to seizure. In support of the reply, the affidavits of the persons who had pawned the jewellery items and the person who had come for repairs were attached.

3. The learned Deputy Collector of Customs and Central Excise was not satisfied with the Explanation and by order dated 3rd September, 1976, seized and confiscated the gold ornaments u/s 71 of the Gold Control Act, for the contravention of Section 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. 5000/- was also imposed on the firm M/s. Ram Singh Manohar Singh Gold Jewellers u/s 74 of the Act.

4. Aggrieved from the order, the petitioner filed an appeal, which was dismissed by the Collector on 24th March, 1977. However, in the revision before the Central Government, the petitioner only succeeded in the reduction of the amount of redemption from Rs. 10000/- to Rs. 7500/- and the penalty from Rs. 5000/- to Rs. 3000/-. 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 adjudication order.

5. The respondents' defense as disclosed in the counter is that in accordance with notification No. S.O. No. 3118, the Central Government has empowered every Gold Control Officer of and above the rank of Superintendent of Central Excise, to enter and search or to authorise any officer of 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 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 27th December, 1980 (R-2).

6. From the careful perusal of the counter, I find that the stand of the respondent is without substance. In Clause (2) 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 the purposes of this Act. Sub-section (2) empowers the Central Government to appoint as many persons as it thinks fit to be Gold

Control Officers by issuing notification in this behalf, to enforce provisions of the Act. Sub-section (2) of Section 58 lays down that any gold control officer 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 goes to show that the Central Government by a notification can appoint any person to be a gold control officer for the purposes of carrying out search but not an officer below the rank of Superintendent of Central Excise.

8. In this case, in pursuance of an information, the preventive staff of the Customs Collectorate searched the residential premises of petitioner No. 2 Shri Ram Singh at Patiala on 27-9-1974 under the authority of the 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 search. As observed earlier, the respondent has placed reliance on Annexure R-I which appears to be a 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 Government of India in the Ministry 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 rank of the Superintendent Central Excise to enter and to search or to authorise any officer of Government to enter and to search any premises, vaults, lockers or any other place whether above or below ground."

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 for 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 Officers (Annexure R/X). This notification No. S.O.2319 dated 29th June, 1968 reads as under :-

"In exercise of 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 Central Excise, of and above the 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 officer shall, subject to such limitations, restrictions and conditions as had been imposed by or under Part XH-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."

(Italic portions - emphasis added).

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

"(2) any person authorised by the Central 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 receptacle, 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.""

In the present case, search was ordered by the Assistant Collector and the authority was delegated to the 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 authorised by the Central Government in writing, to effect search or further to delegate his powers to the Inspector and if at all he was authorised, then subject to which limitations, restrictions and conditions. Even this notification, sought to be brought on record, by the supplementary affidavit is of no help to the respondent. 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 search warrant and to have it carried out by his subordinate on 27th September, 1974.

10. On the second aspect also, the petitioners have a case. The value of the seized gold ornaments has been assessed at Rs. 33000/-. This is clear from Panchnama (Annexure P-1) and the statement of Ram Singh (Annexure P-2). The show cause notice, P-3, dated 21st February, 1975 is based on the Panchnama. In the counter, the respondents do not dispute this valuation. The order of the Collector confiscating the gold ornaments and imposing penalty is dated 3rd September, 1976. The respondents have placed reliance is the notification dated 27th December, 1980 (Ex. R-2), wherein the " Deputy Collector of Central Excise/

Deputy Collector of Customs have been given the powers to adjudicate, confiscate and impose the penalty, etc. of the property, the value of which does not exceed Rs. 1 lakh. The bare reading of this notification shows that it was issued in supersession of all the previous notifications 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 3rd September, 1976 is prior in time than the issuance of this notification.

11. In order to overcome this difficulty, learned counsel for the respondent placed on record the copy of a notification No. S.O. 2322, dated 29th June, 1968 (R/Y) by filing the supplementary affidavit. By virtue of this notification, the Central Govt, conferred the powers of adjudication, confiscation and imposition of penalty, on the Gold Control Officers of the ranks mentioned therein. The Dy. Collectors of Central Excise and Customs were authorised to exercise these powers where the value of the gold liable to confiscation (whether such gold is available for confiscation or not) does not exceed Rs. 25,000/-. By this notification, the Dy. Collector had the jurisdiction to adjudicate or confiscate the gold the value of which was not more than Rs. 25000/-. 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 Dy. Collector had no jurisdiction to pass the order of confiscation or impose the personal penalty on petitioner No. 2.

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

13. Before parting with this case, I have no hesitation to express the helplessness of the Court to arrive 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 from time to time, with a view to effectively implement the provisions of this Act and/or to cover up the lacunas when brought to the knowledge of the Department. Most of these notifications do not form part of the bare Acts nor such notifications are available in the market. The office of the respondent is supposed to maintain the record of such notifications and place before the Court as and when required. I am sorry to observe that the officers of the respondent have not given the due importance which this case deserved and have not cared to even 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 a relevant notification 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 to produce the same. I have no option but to condemn the attitude of the respondent -department and leave it at that.

14. In the result, the petition is accepted., The orders passed vide Annexure P-6,

P-8 and P-10 are quashed. The respondents are directed to refund the amount of Rs. 7500/- and Rs. 3000/- imposed upon the petitioners as redemption charges and personal penalty. The criminal proceedings launched against the petitioner are also quashed.