
(1999) 08 MP CK 0024

In the Madhya Pradesh High Court

Case No : Writ Petition No. 211 of 1994 31 August 1999

SMT. PUSHPAVATI and Another

APPELLANT

Vs

COLLECTOR OF CUSTOMS and CENTRAL EXCISE and ORS

RESPONDENT

Date of Decision : 31-08-1999

Acts Referred:

Gold Bonds (Immunities and Exemptions) Ordinance, 1993 — Section 4

Citation : (1999) 157 CTR 391 : (2000) 1 MPLJ 306

Hon'ble Judges : B.A. Khan, J

Bench : Division Bench

Advocate : G.M. Chafekar, for the Petitioners and B. G. Nema,s, for the appearing parties;

Judgement

B.A. Khan, J.

IT authorities raided petitioners" residential and business premises on 21-5-1988, and seized 55 gold coins and pendants with foreign markings and put it for safe custody in, State Bank of India (respondent No. 3), Assessee (Petitioner No. 2) offered to disclose the value of the seized property as undisclosed income and paid the tax liability of Rs. 14 lakhs or so to secure release of the seized gold. He applied for the release on 8-11-1990, and the Commissioner ordered it on 7-9-1992, subject to certain conditions.

2. It appears that no follow up action was taken by petitioners in the matter till they again applied to Asstt. Commissioner on 9-6-1993, for the release of the gold and for its hand over to bank branch manager on the plea that they wanted to subscribe it for gold bonds under the gold bonds Scheme. The gold was consequently ordered to be released and a Panchnama executed on 10-6-1993, which was signed by petitioner No. 2 also. But before petitioners could take it home, it was seized by the customs authorities pursuant whereto respondent No. 1 issued the show-cause notice to petitioners asking them why it be not confiscated.

3. Petitioners feel aggrieved of this and say that bank was obliged to issue bonds to them once they had applied for it in the prescribed form on 14-6-1993, and its default had resulted in the illegal seizure of the gold. Respondent bank, on its part resists the claim on the ground that it could not issue bonds because petitioners application was not accompanied by tender of any gold in terms of cl. 4 of the scheme. It is also denied that petitioners were in physical possession of the gold for subscribing gold bonds.

4. It was submitted on behalf of respondent No. 1 that once the gold was released to petitioners pursuant to Panchnama dt. 14-6-1993, he was within his rights to take action under the Customs Act. In any case only show-cause notice was issued requiring petitioners to show cause why the gold be not confiscated and they could explain the position and save it from confiscation.

5. Learned counsel for petitioners Shri G.M. Chafekar urged that respondent bank was obliged to convert the disputed gold into gold bonds only on an application made in this regard under the scheme and once that application was made, it had no option but to issue bonds to the petitioners. Since the bank had failed, it resulted in seizure of the gold by the customs authorities, it could be still directed to issue bonds to petitioners. He placed reliance on s. 4 of the Gold Bonds ((Immunities and Exemptions) Ordinance, 1993, in this regard. Therefore, all that remained to be seen was whether the bank was duty-bound under the ordinance and the scheme to convert the disputed gold into bonds and to issue those to petitioners.

6. Sec. 4 of the Ordinance reads thus :

"Sec. 4. Immunities.-(1) Notwithstanding anything contained in the Wealth Tax Act, 1957 (27 of 1957), the GT Act, 1958 (18 of 1958), the Income Tax Act, 1961 (43 of 1961), the Customs Act, 1962 (52 of 1962), the Foreign Exchange Regulation Act, 1973 (46 of 1973) and the Foreign Contribution (Regulation) Act, 1976 (49 of 1976).-

no subscriber shall be required to disclose, for any purpose whatsoever, the nature and source of acquisition of the gold subscribed for the gold bonds, including the source of money with which the gold was acquired;

no inquiry or investigation shall be commenced against any subscriber under any of the said Acts on the ground that such subscriber owns the gold bonds; and

the fact that any subscriber owns the gold bonds shall not be taken into account for the purposes of, and shall be inadmissible as evidence in, any proceedings under any of the said Acts.

Provided that nothing contained in this sub-section shall apply where any proceedings is respect of the gold subscribed by the subscriber have already been initiated before the commencement of this Ordinance in accordance with the provisions of any of the aforesaid Acts. "

(Emphasis, italicised in print, supplied)

7. It is not that issuance of bonds under the ordinance or the scheme is a routine affair with a subscriber making an application to be followed by an automatic conversion. It is true that the process commences with an application in the prescribed form, but it requires other steps like tendering of gold, etc., to be taken for preparation and issuance of gold bonds. Where the gold is not available to be tendered, for instance, it cannot be said that reviewing authority concerned was duty-bound to issue the bonds only on an application.

8. The disputed gold in the present case though with the bank was legally in the custody of IT authorities till it was finally ordered to be released on 9-6-1993, culminating in execution of Panchnama and its delivery to petitioner No. 2 on 14-6-1993. Therefore, it cannot be said since the gold was lying in the bank, it should be deemed belonging to and in custody of petitioners and, therefore, was not required to be tendered when petitioners applied for conversion on 14-6-1993.

9. It sounds wholly fictional and far-fetched and in fact petitioners' claim appears contradiction in terms. If they believe that disputed gold be treated in their custody on the strength of Commissioner's order dt. 7-9-1992, why did they not take benefit of this order and why did they apply to Asstt. Commissioner for release after one year and signed on the Panchnama. All this shows that the gold remained in the custody of IT authorities till 14-6-1993, and was not available for being tendered by petitioners for conversion. Consequently no duty was cast on the bank to issue bonds to them before it was seized by the customs authorities. In the circumstances it becomes difficult to hold that respondent-bank was under an obligation under the Gold Bonds Scheme to convert the disputed gold into bonds on the mere application made by the petitioners and to issue such bonds to them. Assuming bank had defaulted in some way in such conversion it was for the Petitioners to take an appropriate remedy into the matter and to prove their title and custody on the disputed gold and in that case nothing said in this order would have any bearing in the matter.

10. Petitioners' case against impugned show-cause notice issued by respondent No. 1 is premature. It was open to them to reply to this notice and to take all pleas available to save the disputed gold from the rigour of provisions of Customs Act. In case they felt aggrieved of any order passed by the customs authorities, they could as well take an appropriate remedy against such order.

11. This writ petition accordingly fails and is dismissed. Security amount is ordered to be returned.