(1966) 06 AP CK 0008

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 57 of 1964

The Collector of Central Excise, Hyderabad and Others — APPELLANT

Vs

Phool Chand Mohanlal and Another — RESPONDENT

Date of Decision : 30-06-1966

Acts Referred:

Defence of India Act, 1971 — Section 3, 44
Defence of India Rules, 1962 — Rule 126(4), 126A, 126B, 126C, 126D
Gold (Control) Act, 1965 — Section 5(3)

Citation : AIR 1968 AP 103

Hon'ble Judges : Jaganmohan Reddy, J;Anantanarayana Ayyar, J

Bench : Division Bench

Advocate : K. Ramachandrarao, for the Appellant; V.S.L. Narasimharao, for A. Kuppuswamy, for the Respondent

Final Decision : Dismissed

Judgement

Jaganmohan Reddy, J.—Our learned brother, Gopalakrishnan Nair, J.. had issued a writ of mandamus directing the appellants Government not to enforce the notices issued by them on 14-6-63 purporting to be under the Gold Control Rules, to the respondents in respect of their business as pawn-brokers, against which this writ appeal has been filed.

2. The respondents are dealers in gold within the meaning of the Defence of India (Amendment) Rules 1963 (hereinafter referred to a ''the Gold Control Rules'') made under the powers conferred u/s 3 of the Defence of India Act (LI of 1962). These Rules, which are contained in Part XII-A of the Defence of India Rules 1962. were inserted by an amendment in 1963. The respondents are also doing business as pawn-brokers. It was their contention in the writ petition filed on 18-6-1963 that while pawnbrokers are exempt from filing any statement as to the jewellery pledged with them, they were asked by a notice issued to them on 14-8-1963 to give a declaration of gold articles pledged with them and also to furnish details of the date of pledge, the description of the ornaments pledged,

the weight of the ornaments so pledged, their net gold content and the amount of loans advanced. After an examination of the relevant gold control rules, our learned brother held that an ordinary person is not bound to make a return or declaration of the gold ornaments in his possession or under his control and that a person who does the business of a pawnbroker by advancing loans on the pledge of gold ornaments need not also make a return or declaration in respect of the ornaments pledged with them, and that a dealer as well as an adult who owns or has in his possession or under his control gold, other than ornaments over and above 50 grams in weight have to make declarations of the gold with them, that the business of the writ petitioners was only a subsidiary one, their main business and by far the larger one, is that of pawn-brokers and as such merely because they are licensed dealers also, they cannot be asked to make a return of the jewels or ornaments pledged with them inasmuch as their being in possession or control of gold ornaments is in an entirely different capacity from that of a dealer It was observed that a person may as an individual own and possess gold ornaments of his own. He may as a managing trustee of a rich temple have possession and control of gold ornaments of the deity . He may as an executor under a will of his deceased friend be in custody of valuable ornaments, and merely because he also happens to be a dealer under the gold control rules, he cannot be held to be liable to make a return or a declaration in respect of the gold ornaments which are in his possession in quite different capacities, and if it were so, one would expect very clear words to that effect in the Gold Control Rules, which clear provisions are not discernible from the rules. In this view, a writ of mandamus was issued.

3. Mr. K. Ramachandrarao on behalf of the appellants contends what is to be seen is the intendment behind the rules which if ascertained, would show that a licensed dealer in gold who is also dealing in pawn or pledge of gold has to make a declaration of the gold held by him in his capacity as a pawn broker so as to enable the Gold Control authorities to keep a check on the dealer. A pawn broker simpliciter not being a dealer as he does not deal in gold either specific or in making jewels or ornaments the control that is envisaged on a ''dealer'' as defined in Rule 126-A (c) will be more effective by requiring him (pawn-broker) to furnish statements of all the gold ornaments in his possession lest at any particular time he may not say that they are ornaments pledged with him, though they may be ornaments made by him as a dealer. Further, Mr. K. Rarnachandra Rao submits that the prescribed form in which a dealer has to make his return namely G. S. 3, being a statutory form, has legislative sanction and a dealer who has ornaments in his possession, whether pledged or otherwise, must make a return in that form.

4. On the other hand, the respondents'' advocate states that u/s 44 of the Defence of India Act, the ordinary avocation of life and the enjoyment of property of a citizen should be interfered with as little as possible, and any requirement which is not expressly provided under the rules would militate against this enjoyment. At any rate, the provisions of these rules do not require

them to make a declaration as pawn-brokers in spite of the fact that they are also dealers. What is provided for, the learned advocate contends, is that they have to make declarations of all gold ornaments which are in their possession as dealers and not in any other capacity.

5. The validity of these contentions would depend upon the provisions of the rules and the requirements thereunder Rule 126-A(c) defines ''dealer'' as meaning any person who carries on, directly or otherwise, the business of (f) making, manufacturing, buying. selling supplying, distributing, melting, processing or converting ornaments, (ii) buying, selling supplying, distributing, melting, processing or converting gold for the purposes of making, or manufacturing ornaments, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration and includes (i) an undivided Hindu family which carries on such business; and (ii) a local authority, society registered under the Societies Registration Act 1860 (21 of 1860) Co-operative Society incorporated under any law with respect to co-operative societies, club, firm or other association which carries on such business, or (a) buys ornaments or gold for the purpose of making ornaments from or (b) makes or manufactures ornaments for (c) processes, melts, or converts ornaments or gold for the purpose of making the ornaments or (d) sells, supplies or distribute ornaments or gold for the purpose of making ornaments to its members (iii) a commission agent, broker, a del credere agent, auctioneer or other mercantile agent by whatever name called, who carries on such business on behalf of any principal. An explanation is provided to this rule specifying some of the terms used in the definition and the extraterritorial operation of the dealer. Rule 126-B prohibits manufacture of articles of gold by a dealer or refiner of gold in certain cases without the authorisation by the Administrator. ''Gold'' is defined in Rule 126-A (c) as meaning gold, Including its alloy whether virgin, melted, remelted, wrought or un-wrought, in any shape or form, of a purity of not less than nine carats and includes any gold coin (whether legal tender or not) any ornament and any other article of gold Rule 126-C restricts the making of gold ornaments having gold of a purity exceeding fourteen carats. Rule 126-D prohibits persons from advancing loans on hypothecation pledge, mortgage or charge of any gold other than ornaments unless such gold has been included in a declaration or a further declaration made under Rule 126-I. Rule 126-E which deals with licensing of dealers and refiners states that save as otherwise provided in Part XII-A, no dealer who is registered under any law with respect to sales-tax and no refiner shall carry on business as such dealer or refiner unless he holds a valid licence issued by the Administrator. The licence issued thereunder may contain such conditions and restrictions as the Administrator may think fit to impose.

6. It may be noticed that a licensed dealer under the Rules means a person who carries on directly or otherwise, the business of making, manufacturing, buying, selling, supplying, distributing, melting, processing or converting ornaments or buying selling supplying distributing melting processing or converting gold for the purpose of making or manufacturing ornaments. The above referred definitions

of dealer in gold ornaments read with Rules 126-B. 126-C and 126-D and 126-E indicate the purpose and intendment of the control of gold in all its forms. The manner in which this control has to be exercised is provided in Rules 126-F, 126-G, 126-H and 126-I. Rule 126-F states that every dealer who is required to apply for a licence or is licensed and every refiner who has made an application for a licence or is licensed, shall make a return to the Board as to the quantity, description and other prescribed particulars of gold in his possession or under his control, Rule 126-G requires a dealer or refiner to keep an account of the gold bought or sold or otherwise received or disposed of by him at each transaction. Every dealer and every refiner has to further produce before the Administrator any account, register or other document, and furnish any information relating to the quantity of gold in his possession or under his control or to the purchase, sale or delivery of gold by him, and these registers or documents shall be kept open to inspection by any person authorised by the Administrator. Rule 126-H prohibits a dealer from having in his possession or under his control any gold which has not been included in the return, provided that any gold acquired after the date of making such return shall be included in the next succeeding return. In Sub-rules (2) there is a prohibition of sale or delivery of gold to any person unless permitted by the Administrator or buying gold not being ornaments from any person other than a dealer or refiner licensed under the Rules. Proviso to Rule 2(b) states that any dealer may buy or otherwise acquire or accept gold not being ornaments from any person if such gold has been included in a declaration made by that person under Rule 126-I.

7. These provisions generally deal with gold which includes in its definition ornaments unless ornaments have been excluded as in Sub-rules 2 (b) of Rule 126-H. But the restriction is against buying or selling or pledging gold including ornaments. ''Ornaments'' as defined in Explanation (e) to Rule 126-A means any article in a finished form, meant for personal adornment or for the adornment of any idol, deity or any other object of religious worship made of, or manufactured from gold, whether or not set with stones or gems real or artificial or with pearls real, cultured or imitation or with all or any of them and Includes parts pendants or broken pieces of ornaments. Every dealer or refiner has to make a return under these provisions for obtaining a license for buying selling or acquiring gold.

8. In so far as the provision for making a declaration of gold is concerned, Rule 126-I provides that every person not being a dealer required to apply for a licence, or licensed or a refiner licensed under this part, shall within 30 days from the commencement of that part or within such further period as the Central Government may by notification specify make a declaration to the Administrator in the prescribed form as to the quantity, description and other prescribed particulars of gold (other than ornament) owned by him Sub-rule (2) says that for the removal of doubts specified the persons who have to make the declarations under Sub-rules (1) who may not be a dealer required to apply for a licence. Sub-rule (3) restricts acquisition of gold other than ornaments except by succession, intestate or testamentary or in accordance with a permit granted by

the Administrator General. Sub-rule (4) imposes a duty of making further declaration of new acquisitions in accordance with Sub-rules (3) by persons who subsequently acquire or possess any gold. Persons who subsequently acquire or possess any gold which is required to be declared shall make an endorsement to that effect on the back of the copy of the declaration in his possession and have to produce before the superintendent for verification within thirty days therefrom. Sub-rule (10) says that no person other than a dealer and a refiner, licensed under that part shall acquire or have in possession or under his control any quantity of gold required to be declared under that rule unless such gold has been included in a declaration or further declaration made thereunder; and as often as any such person acquires or parts with, after any such declaration or further declaration, any quantity of gold, the quantity acquired or parted with shall be endorsed by such person and in such manner as may be prescribed on the copy of the declaration retained by the person who has made the declaration or further declaration and such copy shall be produced within thirty days from the date of such endorsement before the Administrator. Sub-rule (1) says that any person in possession or control of any gold not being ornaments, shall be presumed until the contrary is proved to be the owner thereof.

9. Under the above rules what is required to be declared is gold other than ornaments which is owned by the persons in Sub-rules (1) read with Sub-rules (2). This is also made clear by Sub-rules (3) namely that a person contemplated in sub-rules (1) and (2) shall not acquire any gold other than by succession intestate or testamentary or in accordance with the permit granted by the Administrator. If any doubt there be, that is made clear by the presumption enacted in Sub-rules (11) that any person in possession or control of any gold not being an ornament until the contrary is proved, is the owner thereof. In our view, the requirement of Rule 126-I prima facie is to provide, for a declaration to be made by a person contemplated in sub-rules (1) and (2) who is the owner of the gold other than ornaments. A pawn-broker is not an owner of gold or of the ornaments pledged with him and since under Rule 126-D hypothecation, pledge, mortgage or charge of any gold other than ornament is prohibited a pawn-broker can only advance moneys on ornaments. Ex facie, there is no prohibition for a dealer who is also a pawn broker from advancing moneys on ornaments and since he does not own them, there is no obligation on his part to declare them. What is contemplated to be declared in the G. S. 3 is ornaments in which the dealer is dealing with and not ornaments of which he is not the owner and on which he is entitled to make advances. At the time when the notices were issued and the writ petition was filed, there was no amendment to Rule 126-D. But subsequently on 24-6-1963, that rule was amended by inserting Sub-rules (2) which prohibited a dealer, whether licensed or not from carrying on business as a money-lender or banker in the same premises in which he carries on business as a dealer of to sell or otherwise transfer to any person any gold on the hypothecation, pledge, mortgage or charge of which he had advanced any loan, whether before or after the tenth day of January 1963 or deliver such gold to the

borrower, whether before or after repayment of the loan, except under and in accordance with such conditions, limitations or restrictions if any, as may be imposed by the Administrator in that behalf. This amendment brought under the control of the Gold Control Rules what was not provided for before that amendment The prohibition in Rule 126-D makes a distinction between gold ornaments and gold in any other form and while a pawn-broker is not prohibited from advancing moneys on the pledge of gold ornaments he is prohibited from advancing money on the pledge of gold in any other form which is not included in the declaration or further declaration under Rule 126-I. What are sought to be prevented are transactions in undeclared gold. The control of a dealer who is also a pawn-broker is, made much more effective by the amendment, by prohibiting him from carrying both the businesses in the same premises, so that any undeclared gold that might come into his hands may easily be discovered from being changed into the shape of ornaments and defeat the very purpose of the control

10. Emphasis however is being laid on Rules . 126-F and 126-G and it is submitted that these rules do not anywhere exclude ornaments and while in Rule 126-F, a return has to be made of gold, which includes ornaments (there being nothing to exclude ornaments specifically), in the possession or control of the dealer, return has to be made and accounts have to be kept not only of gold bought or sold but gold otherwise received or disposed of by him at each transaction. While gold bought or sold may not include pledged ornaments it is said the words ''otherwise received or disposed of by him'' would include pledged goods also The contrary intention as had already been noticed is- that possession or control of sold including ornaments or gold otherwise received or disposed of has to be read in relation to the dealer which intention is emphasised by the words "in his possession or, under his control" in R. 126-F and ''by him'' in Rule 126-G. The words ''his'' or ''him'' in these rules refer only to the dealer in his business as a dealer. In our view there is merit in this argument. These rules it may be observed deal with a dealer, who is required to apply or has applied for a licence and a person who is required to obtain a licence in terms of Rule 126-E. Hypothecation and pledging of goods is not part of the business of a dealer as such, but is apart from it. The prohibition of loans on hypothecation of gold as already noticed, is dealt with under Rule 126-D. inasmuch as non-making of a return under Rule 126-F or 126-I or non-maintenance of accounts under Rule 126-G is made an offence punishable with fine or imprisonment under Rule 126-P: no offence can be spelled out by a strained construction or any intendment of the statute unless the requirement is expressly provided for, the omission to which is to expose him to penal consequences. The rule which requires that penal and some other statutes shall be construed strictly is a well known one. ''It was founded on the tenderness of the law for the rights of individuals and on the sound principle that it is for the Legislature, not the Court, to define a crime and ordain its punishment. It is unquestionably a reasonable expectation that when the legislature intends the infliction of suffering, or an encroachment on natural

liberty or rights, or the grant of exceptional exemptions, powers and privileges, it will not leave its intention to be gathered by mere doubtful inference, or convey it in ''cloudy and dark words'' only, but will manifest it with ''reasonable clearness'' (See Maxwell on the Interpretation of Statutes 11th Edn. pp. 253, 264). The fact that the Legislature now required pawn-brokers also to make declaration is made evident by Section 5(3) of the Gold Control Act, 1965. Even prior to that, the amendment of Rule 126-D by the addition of sub-rules (1) and (2) made it clear that dealers doing pawn-broking business must carry each of the business in separate premises. This of course was designed to control the dealer than the pawn-broker.

11. On the interpretation of the several rules, we have come to the same conclusion as our learned brother, that no declaration could be called for as per the impugned notice from a dealer who is also a pawnbroker in respect of the pledged ornaments or declared gold, and consequently, this appeal is dismissed with costs. Advocate''s fee Rs. 100.