

(1972) 02 KL CK 0013

High Court Of Kerala

Case No: None

M. Thankappan Achari

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Feb. 10, 1972

Acts Referred:

- General Clauses Act, 1897 - Section 15

Citation: (1972) CriLJ 1460

Hon'ble Judges: V.P. Gopalan Nambiyar, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

V.P. Gopalan Nambiyar, J.

The petitioner. Sri. M. Thankappan Achari. is a licensed sold dealer. On 9-10-1964 his residential house in Attingal Municipality was searched by the officers of the Central Excise Divisional Office. Trivandrum. on the strength of authorisation issued by the Assistant Collector. Central Excise. In the course of the search which lasted from 8.00 a. m. to 4.00 p. m. 28 articles of gold weighing in all. 4629.250 grams. were seized in the presence of witnesses for investigation under Rule 126L (2) of the Defence of India Rules, 1962. A search mahazar was prepared in the presence of witnesses and the articles were weighed. It is admitted that the sold of which the articles were made, was above 14 carat in purity. In a statement, to the Assistant Collector dated 9-10-1964. the petitioner admitted that about 2000 grams were made for his family use. and the remaining were gold ornaments brought to his house from his workshop at the time of the introduction of the Gold Control Rules. He admitted also that some of the ornaments seized were received by him from the public for repairing and polishing. A show cause notice was issued to the petitioner under Rules 126-B (1)(a)(i). 126-0 (1) (a)(ii) 126-F (1). 126-G (1). 126-H (1) of the Defence of India Rules of 1962. and he was required to show cause against confiscation under Rule 126-M. In his reply dated 13-1-1965 the petitioner stated

that all the articles seized were acquired before 19-10-1960. that the statement dated 9-10-1964 was not voluntary but was the result of constraint exercised by the Officers of the Department and that the admission contained therein should not be used against him. At the enquiry. the petitioner was represented by Counsel. Sri Napoleon and Sri Nanu the attestors of the seizure Mahazar were examined. They both have spoken to the statement having been given by the petitioner. Sri Napoleon deposed to having got repaired one necklace of his wife through the petitioner and also having given 2 bangles and a chain for polishing. The ornaments thus given were of 22 carat purity. There was evidence of one Noohu Kannu Asan. Proprietor. Hameediya Motor Service, Alancode for having given ornaments for repairs to the petitioner.

2. The Collector of Customs and Central Excise adjudicated the matter by his order Ext. P. 1 and held that the statement dated 9-10-1964 given by the petitioner was voluntary; that the petitioner admittedly was receiving ornaments for repairs and polishing but did not remember the names of the persons from whom the ornaments were received: that he was not able to point out which were the ornaments kept for family use: that the pattern of the seized ornaments, and their weight and quantity. negated the case that they were his family ornaments many of them being of the type generally worn by Christians and Muslims; that the petitioner had no accounts to show the articles received for repairs nor could he identify the articles received for repairs or segregate them from those owned by his family. On this footing the adjudicating authority was of the opinion that the seized articles were part of the petitioner's stock-in-trade kept in his house as a dealer without giving the statement of declaration, and without accounting for them in the statutory registers. He accordingly adjudicated the petitioner as having contravened the provisions of Rules 126-B-(1-A) 126-O. 126-F, 126G and 126H of the Defence of India Rules. 1962 and ordered confiscation of the gold ornaments seized. An appeal preferred against the order was dismissed by Ext. P-8 order. The petitioner seeks to quash Exts. P-1 and P-8 orders.

3. It was contended that the search and seizure of the gold from the dwelling house of the petitioner was illegal and contrary to the Rules. Rule 126-L (2) empowers any person authorised by Central Government to enter and search any premises not being a refinery or establishment etc.. and to seize any gold in respect of which he suspects that any provision of the Gold Control Rules has been or is being or is about to be contravened. This is sufficient to authorise the search of the petitioner's dwelling house.

4. But it was said that the authority conferred for search in the instant case, is not valid and proper. The authority is contained in S.O. 130 which for the sake of convenience is reproduced:

Section 130. In exercise of the powers conferred by Rule 126-X read with Sub-rule (4) of Rule 126-J of the Defence of India Rules, 1962 the Central Government hereby

authorises officers of the Central Excise Department not inferior in rank to officers specified in Column 2 of the table below as the persons who shall exercise any or all the powers of the Gold Board in relation to the matters specified in the corresponding entries in column 3 and column 4 of the said table.

Table omitted

The above notification is wrong in tracing the source of the power to Rule 126-X and Sub-rule (4) of Rule 126-J rather than to R, 126-L (2) and also in referring to all powers of the Gold Board as having been conferred on the officers. But it is well settled that the power being, there, the fact of its being traced to a wrong source will not vitiate the exercise of the power. The reference to the Gold Board is an obvious anachronism and mis-description the Gold Board being the requisite authority before it was substituted by amendment of Defence of India Rules by the Administrator. This mis-description again cannot vitiate the notification. That this notification cannot be held invalid by reason of the citation of the wrong provision as to the source of its authority or for giving the wrong reference to the Gold Board was ruled out in [Jayantilal Amrutlal Shodhan Vs. The Union of India and Others](#), paragraphs 6 to 9. with which I am in respectful agreement.

5. The notification is sought to be attacked on yet another ground viz. that the Rule contemplates authorisation persona designate and not to any well defined class of officers. I am unable to agree. As pointed out again in the Gujarat ruling in [Jayantilal Amrutlal Shodhan Vs. The Union of India and Others](#), the expression "person" used in Rule 126-L (2) is wide enough to cover a person described by his office. That decision points out that although Section 15 of the General Clauses Act 1897 is not strictly applicable the principle of the section is helpful to hold that where there is power to appoint a person to execute certain functions such appointment may be made either by name or by virtue of office. I hold that authorisation to a designated class of officers is not invalid.

6. Rule 126-B (I-A) prohibits a dealer other than a certified gold-smith from accepting any gold ornaments of Purity exceeding 14 carats for polishing or repairing. It was contended that there was no proof that the articles seized had been so accepted. But the nature and quantity of the ornaments seized, the absence of accounts on the part of the petitioner and his inability to identify the articles seized as belonging to his family or to segregate them from those given for repair coupled with his own statement dated 9-10-1964. and the evidence of the witnesses examined justify the conclusion that there was contravention of Rule 126-B (1-A). Rule 126-C (1-A)(i) prohibits a dealer from making, manufacturing or preparing any ornament having gold of purity exceeding 14 carats. Rule 126-F requires every dealer to make a return as to the quantity description and other particulars of gold in his possession or under his control on the date of the commencement of the Gold Control Rules. Rule 126-G enjoins every dealer to keep an account of the gold bought or sold or otherwise received or disposed of by him at each transaction; and 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 required by the Rules. On the fact shown and established the conclusion is inescapable that the petitioner has contravened the provision of these Rules. The petitioner's attempt to split his personality into two the one as dealer and the other as owner appears over-subtle and not countenanced by the Rules.

7. I do not find any reason to interfere. I dismiss this petition but make no order as to costs.