Bireswar Sirkar Vs Collector of Central Excise and Others

Court: Calcutta High Court

Date of Decision: May 15, 2002

Acts Referred: Constitution of India, 1950 â€" Article 14, 19, 21, 226
General Clauses Act, 1897 â€" Section 6
Gold (Control) Act, 1968 â€" Section 4, 68, 78
Gold (Control) Rules, 1963 â€" Rule 126(1), 126(1), 126M

Citation: (2003) 2 CALLT 523 : (2003) 162 ELT 1170

Hon'ble Judges: Ashok Kumar Mathur, C.J; Jayanta Kumar Biswas, J

Bench: Division Bench

Advocate: N.C. Roy Chowdhury, Bhaskar Sen and Prantosh Mukherjee, for the Appellant; P.K. Ghosh and M.K. Goswami, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Mathur, C.J.
This is an appeal directed against the order dated 12th January, 1984 passed by the learned single Judge whereby the

learned single Judge has dismissed the writ petition. The petitioner filed this writ petition before the learned single Judge challenging the show cause

notice issued to the petitioner by the Collector of Central Excise and Customs, Calcutta and Orissa under Defence of India Rules.

2. The petitioner carries on business as jeweller and manufacturer of and dealer in gold ornaments under the firm name and style of M/s. B. Sarkar

(Johuri) as the sole proprietor thereof. The petitioner was served with a show cause notice on 9th February, 1967 by the Collector of Central

Excise and Customs, Calcutta and Orissa to show cause why certain quantities of gold and gold ornaments as mentioned in the show cause notice,

which have been seized from his premises No. 131B, Bepin Behari Ganguly Street, Calcutta, should not be confiscated under Rule 126M of the

Defence of India Rules, 1962 and why penalty should not be imposed upon him under Sub-Rule 16 of Rule 126L of the said Rules. The workshop

of the petitioner was alleged to be under occupation of Gopal Chandra Singh, an employee of the petitioner M/s. B. Sarkar (Johuri) and from there

the entire ornaments were seized. This show cause notice was issued to the petitioner in pursuance of a raid at the workshop of the petitioner on

the ground floor of 131B, B.B. Ganguly Street, Calcutta on 2nd September, 1965 wherefrom 138 tollas 13 annas and 10.5 pies or 1619.724

grams of gold and gold ornaments (finished as well as unfinished) all of above 14 carat purity were seized. It is also alleged that 19 tollas and 3

annas of gold ornaments were found inside boxes bearing labels of M/s. B. Sarkar (Johuri). It is also alleged that apart from such gold or gold

ornaments, some books of accounts, claiming them to be of the petitioner firm, were also taken into custody from that premises. At the time of

seizure statements of some of persons were recorded by the Gold Control Officers and it was learnt that this premises belonged to the mother of

the petitioner by virtue of a family settlement.

3. The petitioner filed a reply to the show cause notice, but before the authorities could decide the matter the petitioner rushed to file the present

writ petition. The learned single Judge after considering the matter in detail came to the conclusion that there is no invalidity in issue of the said

show cause notice, therefore, he dismissed the writ petition. Aggrieved against this order the present appeal has been filed by the petitioner.

4. For better appreciation of the matter it would be convenient to reproduce the charges which have been leveled against the petitioner in the show

cause notice. The charges were: the petitioner violated the provisions of the Defence of India Rules in the following manner:

(i) Rule 126-C(1)(a)(i) of the Defence of India Rules; 1962 in respect of 92(T)-0-4.5 (P) or 1073.345 grams of gold ornaments of above 14

carat purity seized which were manufactured in the premises at 131B, B.B. Ganguly Street, Calcutta under the control of the firm M/s. B. Sarkar

(Johuri) after 10.1.63 and also in respect of 39866.469 grams of gold ornaments manufactured by the firm during the period from 11.10.63 to

10.8.65 as revealed in the books of accounts.

(ii) Rule 126-C(1)(a)(i) ibid, in respect of 39866.469 grams of gold ornaments of above 14 carat purity sold by the firm during 11.10.63 to

10.8.65, as revealed from the books of accounts.

(iii) Rule 126-H(1) of ibid in respect of 138(T)-13(A)-10.5(P) or 1619.724 grams of gold in their possession which has not been included in any

return.

(iv) Rule 126-H(2) ibid in respect of 34(T)-6(A)-1.5 (P) or 401.206 grams of primary gold seized which was acquired by them in an unauthorised

manner in the said premisesd, and also in respect of 7322.315 grams of primary gold acquired by the firm during 27.11.63 to 13.5.64 as revealed

from the books of accounts.

(v) Rule 126-E of ibid in respect of the entire quantity of 138(T)-13(A)-10.5 (P) or 1619.724 grams of the gold and gold ornaments, inasmuch as

the premises where the above gold and gold ornaments were dealt with was not declared by them in the GSI application prescribed under the

Rules.

(vi) Rule 126-G ibid in respect of the entire quantity of gold and gold ornaments seized, weighing 38(T)-13(A)-10.5 (P) or 1619.724 grams and

also in respect of 39866.469 grams of gold ornaments and 7322.315 grams of primary gold as revealed from the books of accounts inasmuch as

they failed to keep accounts of the gold in the prescribed manner.

5. By this show cause notice both the petitioner and Gopal Chandra Singh was asked to explain the aforesaid charges. The said Gopal Chandra

Singh is alleged to be an abettor in contravention of the provisions of Defence of India Rules, 1962. It would be relevant to mention here that the

initial notice was given to the petitioner under the Defence of India Act and the Rules framed thereunder. Thereafter, the Gold Control Act, 1968

(hereinafter referred to as the Act) came into force and all the proceedings which were initiated under the Defence of India Rules were deemed to

be under the Gold Control Act, 1968. The Act lays down that possession of certain quality and quantity of gold is prohibited. Section 4 of the Act

lays down that the matter will be adjudicated by persons authorised by the Government of India and Section 68 laid down the adjudicating

authorities and in that the Collector of Customs and Central Excise were designated as authorities to adjudicate the offences committed under the

Defence of India Act, 1962, and Gold Control Act, 1968. Therefore, notice was issued by the Collector of Customs and Central Excise, Calcutta

and Orissa. All the authorities who were working as the Collector of Customs and Central Excise were entrusted with the power to adjudicate

under the Gold Control Act, 1968. In this connection it may be relevant to mention here that somewhat similar question came up before the Apex

Court in the case of Jayantilal Amrathlal Vs. The Union of India (UOI), that whether the action which has been initiated under the Defence of India

Rules can be continued under the Gold Control Ordinance, 1968 which was repealed by the Gold Control Act, 1968 or not. The question was

answered by the Apex Court against the appellant. Their Lordships held that the proceedings which had been initiated under the Defence of India

Rules, 1962 could be continued and concluded under the Gold Control Act, 1968. A short resume of the enactments i.e. Defence of India Act,

1962, the Gold Control Ordinance, 1968 and Gold Control Act, 1968, was given in the aforesaid judgment. It is pointed out that the President of

India promulgated a proclamation of emergency on 26th October, 1962 in exercise of powers conferred on him by Clause (1) of Article 352 of

the Constitution of India. As the Parliament was not in session at that time, the President of India promulgated the Defence of India Ordinance on

the same day (Ordinance No. IV of 1962). That Ordinance was published in the Gazette of India Extraordinary on that very day. In pursuance of

the powers given by the said Ordinance, Defence of India Rules, 1962 were framed. This ordinance was repealed and replaced by the Defence of

India Act, 1962. This Act came into force on 12th December, 1962 and the Rules framed thereunder earlier continued under that Act. By a

notification published in the Gazette of India on 9th January, 1963, the Defence of India Rules were amended by incorporating therein Part XII-A.

The same is called Gold Control Rules, 1963. Rule 126(1) of those Rules require every person not being a dealer to make a declaration within 30

days from the commencement of Part XII-A of the Defence of India Rules or within such period as the Central Government by notification specify,

to the administrator in the prescribed form, as to the quantity, description or other particulars of the gold owned by him and Sub-rule (11) of that

rule lays down that any person in possession or control of gold, not being ornaments shall be presumed, until the contrary is proved, to be the

owner thereof. Under Rule 126(I), the declaration in question was required to be make before the 28th February, 1963. In this case before the

authorities a declaration was made on 7th February, 1963 of 25 sovereigns and six gold bars, each of 26.2/3 tolas in the prescribed form. Then on

18th November, 1964, the Income Tax Officer searched the premises of the appellant and huge quantity of gold was discovered. Thereafter, the

Assistant Collector of Central Excise, Baroda issued a show cause notice on 5th June, 1965 requiring the petitioner to show cause within 10 days

why the gold seized should not be confiscated under Rule 126M of the Gold Control Rules and why penalty u/s 126L(16) should not be imposed

on him. The petitioner filed a writ petition against this order and an argument was raised that the seizure of gold was bad and no penalty can be

levied. During the pendency of the matter before the High Court, the President of India withdrew the proclamation of emergency and the Gold

Control Ordinance of 1968 was issued and that Ordinance was repealed and replaced by the Act. By Section 116(1) of the Gold Control Act,

1968, the Gold Control Ordinance, 1968 was repealed. Section 116(2) provided:

Notwithstanding such repeal, anything done or any action taken including any notification, order or appointment made, direction given, notice,

licence or certificate issued, permission, authorisation or exemption granted, confiscation adjudged, penalty or find imposed, or forfeiture ordered,

whether under the Gold Control Ordinance, 1968 or Part XII-A of the Defence of India Rules, 1962, shall in so far as it is not inconsistent with the

provisions of this Act, be deemed to have been done, taken, mad, given, issued, granted, adjudged, imposed or ordered as the case may be,

under the corresponding provision of this Act, a if this Act has commenced on the 29th day of June, 1968.

6. By virtue of this repeal and saving clause the proceedings which were initiated under the Defence of India Rules or Gold Control Ordinance

were allowed to continue. In that context challenge was made whether the action initiated under the Gold Control Act, 1968 can be saved or not.

The contention was: whether the notice issued to the petitioner can be operative under the Gold Control Act or not. Their Lordships held that there

are no provisions in the Gold Control Act, 1968 which are inconsistent with Rule 126(I)(10) of the Rules. It was observed that rule must be

deemed to be continuing in view of Section 6 of the General Clauses Act, 1897. It was observed that it is true that Gold Control Act, 1968 does

not purport to incorporate into that Act the provisions of Section 6 of the General Clauses Act, but the provisions therein are not inconsistent with

the provisions of Gold Control Act and the provisions of Section 6 of the General Clauses Act can be attracted in view of the repeal of Gold

Control Ordinance, 1968 as the Gold Control Act does not exhibit a different or contrary intention, proceedings initiated under the repealed law

must be held to continue.

Therefore, their Lordships, dismissed the appeal filed by the petitioner before the Apex Court and upheld the show cause notice. It was observed:

The above contention is untenable. There are no provisions in the Gold (Control) Act, 1968 which are inconsistent with Rule 126(1)(10) of the

''Rules''. That being so, action taken under that rule must be deemed to be continuing in view of Section 6 of the General Clauses Act, 1897. It is

true that Gold (Control) Act, 1968 does not purport to incorporate into that act the provisions of Section 6 of General Clauses Act. But the

provisions therein are not inconsistent with the provisions of Section 6 of the General Clauses Act. Hence the provisions of Section 6 of the

General Clauses Act are attracted in view of the repeal of the Gold (Control) Act does not exhibit a different or contrary intention, proceedings

initiated under the repealed law must be held to continue. We must also remember that by Gold (Control) Ordinance, the ''Rules'' deemed as an

act of Parliament. Hence on the repeal of the ''Rules'' and the Gold (Control) Ordinance, 1968, the consequences mentioned in Section 6 of the

General Clauses Act, follow. For ascertaining whether there is a contrary intention, one has to look to the provisions of the Gold (Control) Act,

1968. In order to see whether the rights and liabilities under the repealed law have been put an end to by the new enactment, the proper approach

is not to enquire if the new enactment has by its new provision kept alive the rights and liabilities under the repealed law but whether it has taken

away those rights and liabilities. The absence of a saving clause in a new enactment preserving the rights and liabilities under the repealed law is

neither material nor decisive of the question.

7. In the present case facts are almost identical to the case of Jayantilal v. Union of India (supra). The only new development which has taken

place in this case is that the Gold Control Act, 1968 was repealed by the Government by the repealing Act of 1990, that is, Gold Control Repeal

Act, 1990. The statement of objects and reasons of the repealed act reads as under:

Gold control which regulated the domestic trade and movement of gold within the country was introduced on 9th January, 1963 as part of the

Defence of India Rules. Late on the Gold Control Act, 1968 was enacted with the broad objectives of controlling the production, manufacture,

supply, distribution, use and possession of an business in gold ornaments and articles of gold. The said enactment was meant to supplement other

preventive measures to make circulation of smuggled gold difficult and its direction easier by extending the control over gold beyond the stage of

import.

2. Over the past 22 years, the results achieved under the Act have not been encouraging and the desired objectives for which the Act was

introduced have not been achieved due to various socioeconomic and cultural factors in the vast multitude of the country"s population and the lack

of administrative machinery. On the other hand, this regressive and purely regulatory Act has given rise to considerable dissatisfaction in the minds

of the public as it has caused hardship and harassment to the artisans and small self employed goldsmiths who have not been able to develop their

skills and earn proper living on account of their rigorous which this Act imposed upon them.

3. Taking these factors into consideration and the advice of experts who have examined issues related to this Act, it is proposed to repeal the Gold

(Control) Act, 1968.

4. The Bill seeks to achieve the said project.

8. In this background the question before us is that after coming into force of the Gold Control Repeal Act, 1990, can the show cause notice

survive or not.

9. Mr. Roy Chowdhury and Mr. Sen, learned counsels for the appellant submitted that in view of the statement of objects and reasons, this

proceeding cannot be allowed to continue as it has clearly mentioned that over the past 22 years of existence of this Act, the results achieved have

not been encouraging and the desired objectives for which the Act was introduced have not been achieved due to various socio-economic and

cultural factors. Therefore, it was submitted that the proceeding has come to an end and this show cause cannot survive. It is also submitted that all

the adjudicating authority has ceased to act and now the Gold Control Officers of the region, who were the Collectors of Customs and Central

Excise does not exist. Their nomenclature have been changed, they have now been designated as the Commissioner of Central Excise by the

Finance Act of 1995. The Collector of Central Excise and Customs does not exist, which used to be the adjudicating authority u/s 78 of the Act.

Lastly, it was contended that no liability accrued in this matter.

10. As against this, learned counsel for the Revenue has taken plea that by virtue of Section 6 of General Clauses Act all actions taken under the

repealed Act are saved. It was submitted that by virtue of Section 6 of the General Clauses Act any action which has been initiated under the

repealed Act shall continue as if the Act has not been repealed and all these proceedings shall be concluded and completed under the repealed

Act.

11. Now the question is only whether Section 6 of the General Clauses Act saves the show cause notice or not. Whenever a Central Act is

repealed and unless a different intention appears, Section 6 of the General Clauses Act will apply to all proceedings which are pending under the

repealed Act. Section 6 of the General Clauses reads as under:

6. Effect of repeal.--Where this Act, or any Central Act or Regulation made after commencement of this Act, repeals any enactment hitherto

made or hereafter to be made then, unless a different intention appears, the repeal shall not--

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered hereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal -proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment

as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment

may be imposed as if the repealing Act or Regulation had not been passed.

12. Now it is admitted fact that the petitioner was served with a notice on 9th February, 1967 for contravention of the Defence of India Rules for

possessing gold and gold ornaments and therefore he was given a notice to show cause as to why the gold may not be confiscated and penalty

should not be imposed. Therefore, action has already been initiated against the petitioner for violation of the provisions of the Defence of India

Rules and now under the Gold Control Act. Therefore, the liability has already accrued, as the petitioner has been prima facie found to be guilty of

violation of the provisions of Defence of India Rules read with Gold Control Act. Once the show cause notice has been issued to the petitioner and

the matter is pending before the concerned authorities, Section 6 of the General Clauses Act will certainly come into play. According to Section

6(c) of the General Clauses Act if any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed then in

that case the repeal of that Act will not affect such liability acquired or accrued. In the present case, liability has already accrued as the petitioner

has been found to have contravened the provisions of Defence of India Rules and the Gold Control Act, 1968 by having unauthorised possession

of gold, for which a notice has been issued. Therefore, Section 6(c) of the General Clauses Act will save this proceeding and the repeal of the Act

will not affect the action which has been already initiated against the petitioner. This proposition of law has been accepted and summarised in the

text book written by Justice G.P. Singh on ""Principles of Statutory Interpretation"" (7th Edition, 1999). While dealing with the consequence of

repeal Justice Singh has said at page 485 that:

Section 6 of the General Clauses Act applies to all types of repeals. The section applies whether the repeal be express or implied, entire or partial

or whether it be repeal simpliciter or repeal accompanied by fresh legislation. The section also applies when a temporary statute is repealed before

its expiry, but it has no application when such a statute is not repealed but comes to an end by expiry. The section on its own terms is limited to a

repeal brought about by a Central Act or Regulation. A rule made under an Act is not a Central Act or regulation and if a rule be repealed by

another rule, Section 6 of General Clauses Act will not be attracted.

13. Therefore, in the present case, show cause notice has been issued to the petitioner for contravention of the provisions of the Gold Control Act

and Defence of India Rules and a liability has already accrued and by virtue of Section 6(c), the authorities shall continue and proceed under the

Gold Control Act as if the Gold Control Act has not been repealed. This is the consequence of Section 6 of General Clauses Act.

14. Learned counsel for the appellant has strenuously urged before us that it is clear from the statement of objects and reasons that the Act has not

been able to achieve the desired result for the past 22 years. Therefore, looking to the statement of objects and reasons the authorities should not

be allowed to prosecute the present show cause notice. It is true that the statement of object and reasons has clearly stated the failure of the Act

being not able to achieve the desired result but the action which has already been initiated for committing offences or contravention of the

provisions of the Act, when it was in force, that will not come to an end. Section 6 of the General Clauses Act says that if any offence has been

committed or liability has been accrued then for that purpose the repealed Act will remain in force and the proceedings under the repealed Act can

be prosecuted. This is precisely being done here. It may be that the statement of objects and reasons were for the purpose of repealing of the Act.

But action that has already been initiated for contravention of the provisions of law which was in existence at the relevant time, will be continued by

virtue of Section 6(c) of General Clauses Act and a different intention be gathered from the statement of objects and reasons.

15. In this connection learned counsel for the appellant has drawn our attention to a Constitution Bench decision in the case of Keshavan Madhava

Menon Vs. The State of Bombay, . Learned counsel for the appellant has drawn our attention to the dissenting judgment of Justice Fazl Ali. With

great respect to the learned counsel the dissenting judgment is not the ratio laid down by this decision, the ratio has been laid down by the majority

of the Judges, i.e. by Justice Kania, CJ., Justice Patanjali Shanstri, Justice Das and Justice Chandrasekhar Aiyer. It was observed by the majority

of Judges as under:

A Court of law has to gather the spirit of the Constitution from the language of the Constitution. What one may believe or think to be the spirit of

the Constitution cannot prevail if the language of the Constitution does not support that view. The idea of the preservation of past inchoate rights or

liabilities and pending proceedings to enforce the same is not foreign or abhorrent to the Constitution of India. The Court should construe the

language of Article 13(1) according to the established rules of interpretation and arrive at its true meaning uninfluenced by any assumed spirit of the

Constitution.

16. Justice Fazl Ali in his dissenting judgment did not agree with this proposition and with reference to various text books, that is ""Statutory

Construction"" by Crawford and with reference to some English judgments tried to take a different view of the matter. It was observed by Justice

Fazl Ali in his dissenting judgment as under:

''There can be no doubt that Article 13(1) will have no retrospective operation, and transactions which are past and closed and rights which have

already vested will remain untouched. But with regard to inchoate matters which were still not determined when the Constitution came into force

and as regards proceedings whether not yet begun or pending at the time of the enforcement of the Constitution and not yet prosecuted to a final

judgment, the very serious question arises as to whether a law which has been declared by the Constitution to be completely ineffectual can yet be

applied. On principle and on good authority, the answer to this question would appear to me to be that the law having ceased to be effectual can

no longer be applied.

17. This dissenting judgment of Justice Fazl Ali was not approved by the majority of the Judges, except Justice Mukherjea. Therefore, this case

does not provide us any useful assistance as the judgment of the majority of the Judges has to prevail as against the minority judgment.

18. As against this there are series of decisions of the Apex Court which has taken the majority view of the above judgment and the same has been

referred to in the case of Jayantilal v. Union of India (supra) as discussed above. In the case of Jayantilal v. Union of India (supra) the Constitution

Bench has taken the view that under Clause 6 of the General Clauses Act any action already initiated under the repealed Act shall continue. In this

connection, number of other cases have been cited by learned counsel for the appellant, which are being dealt hereafter.

19. Our attention was invited by the learned counsel for the appellant to a decision of the English Court in the case of Watson v. Winch reported in

1916 All ER 972. In this case the question was that the repealed Act conferred power to make bye-laws and the repealing Act did not permit

continuation of the bye-laws framed under the repealed enactment. Their Lordships held that by-laws become invalid unless expressly preserved

by the repealing statute. It is true that once bye-law has been framed under a statute and the new statute which has come into force has not

expressly provided for continuation, then bye laws will not survive as a result of the new enactment. But this is not the case here. Therefore, this

case cited by the learned counsel for the appellant does not provide any useful assistance to the petitioner.

20. The case of Manujendra Dutt Vs. Purendu Prosad Roy Chowdhury and Others, arose from this Court under the Calcutta Thika Tenancy Act,

wherein their Lordships observed:

The Thika Tenancy Act does not confer any additional rights on a landlord but on the contrary imposes certain restrictions on his right to evict a

tenant under the general law or under the contract of lease. The Thika Act like other Rent Acts enacted in various States imposes certain further

restrictions on the right of the landlord to evict his tenant and lays down that the status of irremovability of a tenant cannot be got rid of except on

specified grounds set down in Section 3. The right of appellant therefore to have a notice as provided for by the proviso to Clause 7 of the lease

was not in any manner affected by Section 3 of the Thika Act. The effect of the non obstante clause was that even where a landlord has duly

terminated the contractual tenancy or otherwise entitled to evict his tenant he would still be entitled to a decree for eviction provided that his claim

for possession falls under any one or more of the grounds in Section 3. Before therefore the respondents could be said to be entitled to a decree

for eviction they had first to give six months" notice as required by the proviso to Clause 7 of the lease and such notice not having been admittedly

given their suit for eviction could not succeed.

21. Therefore, by virtue of the non obstante clause in Section 3 of the Calcutta Thika Tenancy Act (2 of 1949) the tenant is entitled to a notice to

quit as provided in the contract of lease and the Amendment Act of 1953 (6 of 1953) will not affect his right. This case was not u/s 6 of the

General Clauses Act, it turns on the question of non obstante clause.

22. As against this, there are series of cases of the Apex Court and other Courts, which have taken the view that such action is saved u/s 6 of the

General Clauses Act.

23. In the case of Bansidhar and Others Vs. State of Rajasthan and Others, the Apex Court has observed:

The scheme of the 1973 Act does not manifest an intention contrary to, and inconsistent with, the saving of the repealed provisions of Section 5

(6A) and Chapter III-B of 1955 Act so far as pending cases are concerned and that the rights accrued and liabilities incurred under the old law are

not affected. The right of the State to the excess land was not merely an inchoate right under the Act, but a right ''accrued'' within the meaning of

Section 6(c) of the Rajasthan General Clauses Act, 1955, and the liability of the land owner to surrender the excess land as on 1.4.1966 was a

liability "incurred" also within the meaning of the said provision.

24. In the case of M/s. P.V. Mohammad Barmay Sons Vs. Director of Enforcement, , the Foreign Exchange Regulation Act, 1947 was repealed

by the Act of 1973. In this case the question arose was, what should be the effect on the cases pending under the repealed Act. Their Lordships

answered the question against the petitioner and held that the action, which has been initiated under the repealed Act should continue. It was

observed:

The effect of the repealed Act of 1947 by operation of Clause (e) of Section 6 of the General Clauses Act read with Sub-section (2) of Section

81 of Act is that, though the Act obliterates the operation of Act 7 of 1947, despite its repeal the penalty, liability, forfeiture or prosecution for acts

done while the repealed Act was in force were kept alive, though no action there under was taken when the Repealed Act was in force. The rights

acquired or accrued or the liabilities incurred or any penalty, forfeiture or punishment incurred during its operation are kept alive. Investigation to

be made or any remedy which may have been available before the repeal be enforced are also preserved. Such rights, liabilities, penalty, forfeiture

or punishment, due to repeal ""shall not lapse"". The new Act did not evince any contrary intention. It merely reiterated the earlier law operating the

field. Therefore Clause (d) of Section 6 of the General Clauses Act gets attracted to the acts done or the penalties incurred or forfeiture or

punishment had already been committed before the repealed enactment, though no criminal proceedings have been actually initiated under repealed

enactment before its repeal.

25. In the case of Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc., it was observed that Section 6 of General Clauses

Act saves the past act or action which has been initiated unless a different intention appears in the new enactment. It was observed:

When there is a repeal and simultaneous reenactment, Section 6 of the GC Act would apply to such a case unless contrary intention can be

gathered from the repealing Act. Section 6 would be applicable in such cases unless the new legislation manifests intention inconsistent with or

contrary to the application of the section. Such incompatibility would have to be ascertained from all relevant provisions of the new Act. Therefore,

when the repeal is followed by a fresh legislation on the same subject, the Court would undoubtedly have to look to the provisions of the new Act

only for the purpose of determining whether the new Act indicates different intention. The object of repeal and re-enactment is to obliterate the

Repealed Act and to get rid of certain obsolete matters.

26. The recent decision of the House of Lords in the case of Aitken v. South Hams DC reported in 1994(3) All ER 400 laid down the same

proposition. It was observed:

A person who, without reasonable excuse, contravenes the requirements of a notice to abate a nuisance served u/s 58 of the Control of Pollution

Act, 1947 after that section was repealed on 1st January, 1991 is nevertheless guilty of an offence. The obligation to comply with a notice served

prior to the repeal of Section 58 continues after 1st January, 1991 because, in the absence of a contrary intention in the repealing Environmental

Protection Act, 1978, Section 16(1) of the Interpretation Act, 1978 preserves not only the effectiveness of a notice served under the 1974 Act but

also the ability to enforce the obligation created by the notice. Failure to comply with a requirement in a notice served under statutory powers

which amounts to a criminal offence also creates an ""obligation or liability"" for the purposes of Section 16(1)(c) of the 1978 Act.

27. Similar view has been taken by the Patna High Court in the case of Kashi Ram Dhandania Vs. Union of India (UOI), under the Gold Control

Act where criminal prosecution was sought to be challenged u/s 482 of the Code of Criminal Procedure i.e. under the inherent jurisdiction. Their

Lordships observed that there are no provisions under the Gold Control Act, 1968 which were in any way inconsistent with Rule 126(1) of the

Rules; that being the position, the Rules must be deemed to be continuing in view of Section of the General Clauses Act, 1897.

28. In the case of Ismail Kutty Vs. Assistant Collector of Central Excise, a similar action under Gold Control Act was saved by the learned single

Judge of Kerala High Court, which held that by virtue of Section 6 of the General Clauses Act all the proceedings which have been initiated under

the repealed Act shall be saved.

29. Therefore, in view of the series of decisions of the Apex Court, English Courts and the High Courts, the proposition is beyond doubt that the

action which has been initiated under the repealed Act shall continue by virtue of Section 6 of the General Clauses Act as if the Act has not been

repealed. As a result of the above discussion we are of the opinion that the contention of the learned counsel for the appellant cannot be sustained.

30. The next question for consideration is that once a proceeding which has been held by us to continue under the repealed Gold Control Act,

1968 because of Section 6(c) of General Clauses Act, then who are the authorities to adjudicate the matter. Previously, u/s 4 read with Section 78

Collector of Customs and Central Excise were designated as Collector of Gold Control to adjudicate the matter. Notice was issued by the

Collector of Customs and Central Excise who were Gold Control Officers, but because of certain amendments in the Central Excise and Salt Act,

1944 in the Finance Act 2 of 1995 the designation of the Collector of Central Excise and Customs have been re-designation as the Commissioner.

Therefore, the contention of the learned counsel for the appellant was that since the Act has been repealed, the Gold Control Officers ceased to

exist and even the Collector of Central Excise and Customs who were concurrently known as Gold Control Officer ceased to exist, therefore,

there is no forum to adjudicate the matter. The contention of the learned counsel for the appellant is erroneous since the repealed Act continues as

far as the pending matters are concerned by virtue of Section 6 of the General Clauses Act. Just because of change of nomenclature of the

Collector of Central Excise and Customs to Commissioner of Central Excise and Customs will not make any difference. It is nothing but a change

of nomenclature of the office that would not frustrate the provisions of the Act. The matter was already seized by the Gold Control Officer and a

change of nomenclature will not make any difference.

31. In this connection reference may be made to the case of Commissioner of Income Tax, Orissa v. Dhadi Sahu reported in 1994 (1) SCC 257

wherein their Lordships observed that the law which brings about a change in forum does not affect the pending actions unless intention to the

contrary is clearly shown.

32. Reference may also be made to the case of Commissioner of Income Tax, Bangalore Vs. Smt. R. Sharadamma, . In this case Section 274(2)

of the Income Tax Act, 1961 required the Income Tax Officer to refer the specified type of cases to IAC and empowering the IAC to impose

penalty in such cases. Omission of the said provisions with effect from 1.4.1976, held, will not deprive the IAC to decide the cases already validly

referred to and pending before him immediately before 1.4.1976. In that case reference was made to Section 6 of the General Clauses Act.

33. In both the cases that is Commissioner of Income Tax, Orissa v. Dhadi Sahu (supra) and Commissioner of Income Tax, Bangalore v.

Dharadamma (supra), referred to above, their Lordships of the Apex Court has observed that since the matter was seized by the authorities and

that will not defeat their right to adjudicate the matter because of the litigation before the Court. Therefore, it does not mean that by change of

nomenclature of the authorities they will not have the right to adjudicate the matter. An affidavit to this effect has been filed by the Revenue that the

cases will be decided by these very authorities, though they have now been designated as Commissioner of Central Excise and Customs Instead of

Collector of Central Excise and Customs. Therefore, we do not find any merit in this contention of the learned counsel for the appellant.

As a result of the above discussion we are of the opinion that there is no merit in this appeal and the same is dismissed. The authorities are directed

to proceed and dispose of the matter as expeditiously as possible. No order as to costs.

J.K. Biswas, J.

34. I agree.

Later on

15.5.02

If urgent xerox certified copy of this judgment and order is applied for the same may be made available to the learned counsel for the parties

expeditiously upon compliance of all the formalities.