

Jayantilal Amrathlal vs The Union Of India (Uoi) on 22 February, 1971

Equivalent citations: AIR1971SC1193, (1972)4SCC174, 1971(III)UJ384(SC), AIR 1971 SUPREME COURT 1193, 1972 4 SCC 174 1971 U J (SC) 384, 1971 U J (SC) 384

Author: K.S. Hegde

Bench: S.M. Sikri, G.K. Mitter, K.S. Hegde, P. Jaganmohan Reddy, A.N. Grover

JUDGMENT

K.S. Hegde, J.

1. The President of India promulgated a proclamation of emergency on October 26, 1962, in exercise of the 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 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 (to be hereinafter called the "Rules"). The Ordinance in question was replaced by the Defence of India Act 1962 (Act I of 1962). That Act came into force on December 12, 1962. The "Rules" framed earlier were continued under that Act.

2. By a notification published in the Gazette of India on January 9, 1963, the "Rules" were amended by incorporating therein Part XII-A. The same is called as "Gold Control Rules, 1963". Rule 126(1) of those rules required every person not being a dealer to make a declaration within 30 days from the commencement of Part XII-A of the "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(1), the declaration in question was required to be made before the 28th February, 1963. On February 7, 1963, the appellant made a declaration of 25 sovereigns and six gold bars, each of 26.2/3 Tolas in the prescribed form.

3. On November 18, 1964, a squad of Income-Tax Officers commenced searching the premises of the appellant. The search continued upto November 21, 1964. On November 20, 1964 the search party discovered huge amount of gold kept buried in one of the rooms of the appellant. The gold bars kept buried weighed 23,329 grams. Alongwith those bars 154 gold sovereigns weighing 1223 grams were

also discovered The quantity of the gold so kept buried was of the value of Rs. 2,83,320/-. The discovered gold was kept in the Safe Deposit Vault of a bank and later on December 17, 1964, the same was seized by the Deputy Superintendent of Central Excise, Ahmedabad. Thereafter the Assistant Collector, Central Excise, Baroda issued a show cause notice to the appellant on June 5, 1965 requiring the appellant to show cause to the Collector of Central Excise, Baroda within 10 days of the receipt of that notice as to (1) why the gold under seizure should not be confiscated Under Rule 126-M of the Gold Control Rules and (2) why penalty Under Section 126-L(16) of the said rules should not be imposed on him.

4. The appellant challenged the validity of that notice before the High Court of Gujarat by means of a writ petition under Article 226 of the Constitution. The High Court upheld the validity of the notice in so far as related to the confiscation of the gold seized but ruled that the proceedings relating to the imposition of penalty were invalid in law. After the judgment of the High Court, the Collector of Central Excise by means of his communication dated December 6, 1968, informed the appellant that the previous notice is confined to show cause as to why the gold seized should not be confiscated. On January 10, 1968, when the writ petition of the appellant was pending before the High Court, the President withdrew the proclamation of emergency. Thereafter the Gold (Control) Ordinance of 1968 was issued. That Ordinance repealed Part XII-A of the "Rules". The provisions therein were replaced by the provisions of the Ordinance. Section 117(1) of the Ordinance dealt with Repeals and Savings. Section 117 provided :

(1) As from the commencement of this Ordinance, the provisions of Part XII-A of the Defence of India Rules, 1962 shall stand repealed and upon such repeal, Section 6 of the General Clauses Act, 1897, shall apply as if the said Part were a Central Act;

(2) Notwithstanding the repeal made by Sub-section (1) but without prejudice to the application of Section 6 of the General Clauses Act, 1897, any notification order, direction, appointment or declaration made or any notice, licence or certificate issued or permission, authorisation or exemption granted or any confiscation adjudged or penalty or fine imposed or any forfeiture ordered or any other thing done or any other action taken under or in pursuance of the provisions of Part XII-A of the Defence of India Rules, 1962, so far as it is not inconsistent with the provisions of this Ordinance be deemed to have been made, issued, granted, adjudged, imposed, ordered done or taken under the corresponding provisions of this Ordinance.

5. In view of Section 117 of the Gold (Control) Ordinance, the notice issued on June 5, 1965, initiating proceedings for forfeiting the gold seized must be deemed to have continued. The provisions in the "Rules" relating to forfeiture are not inconsistent with any of the provisions of the Gold (Control) Ordinance, 1968.

6. On August 24, 1968, the Parliament passed the Gold (Control) Act, 1968. The same received the assent of the President on September 1, 1968 and came into force on and from that date. By Section 116(1) of that Act 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 fine 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, made, given, issued, granted, adjudged, imposed or ordered, as the case may be, under the corresponding provision of this Act, as if this Act had commenced on the 29th day of June, 1968.

7. In view of Section 116(2) of the Gold (Control) Act, 1968, it was urged on behalf of the appellant that the notice issued on June 5, 1965 can no more be operative because under the Gold (Control) Act, 1968, there are no provisions for making declaration relating to the possession of primary gold. At this stage it may be noticed that under the "Rules" every person who was in possession of primary gold, exceeding the prescribed weight was required to convert the same either into ornaments or sell the same to the licensed dealers within the time prescribed by the "Rules". Possession of primary gold thereafter exceeding the prescribed limit was an offence. That period had expired long before the Gold (Control) Act, 1968 came into force. Hence the Gold (Control) Act naturally did not make any provision for a declaration of the possession of primary gold. In view of that circumstance it was urged on behalf of the appellant that the provisions in the "Rules" requiring a declaration to be made in respect of the possession of primary gold are inconsistent with the provisions of the Gold (Control) Act and therefore the notice issued under the "Rules" cannot be considered as being continued under the provisions of the Gold (Control) Act, 1968.

8. 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 the General Clauses Act. But the provisions therein are not inconsistent with the provisions in 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) Ordinance, 1968. As the Gold (Control) Act, does not exhibit a difference or contrary intention, proceedings initiated under the repealed law must be held to continue. We must also remember that by Gold (Control) Ordinance, "Rules" were 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 into 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 provisions 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 see *State of Punjab v. Mohar Singh* and *T.S. Baliah v. Income-tax Officer, Central Circle VI, Madras* 72 ITR 787.

9. For the reasons mentioned above we agree with the High Court that the proceedings commenced by the Collector of Central Excise by means of the notice dated June 5, 1965 must be deemed to be continuing.

10. In the result this appeal fails and the same is dismissed with costs.