

K.T. Kuruvila Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jan-05-1988

Reported in : (1990)(46)ELT304Tri(Chennai)

Appellant : K.T. Kuruvila

Respondent : Collector of C. Ex.

Advocate for Def. : Dr. Syed Mohammed

Judgement :

1. Since the above applications and appeals arise out of the common impugned order of the Collector of Central Excise, Cochin, dated 1-6-1987, they are taken up together and disposed of by a common order.

G/Misc/424 & 399/87. - These Miscellaneous Petitions have been filed seeking stay of the operation of the impugned order pending appeals.

Since we propose to dispose of the appeals themselves today the petitions are dismissed.

Appeal Nos. G/272 & 273/87. - Under the impugned order the Collector of Central Excise, Cochin, has confiscated 2261.750 gms. of gold and gold ornaments under Section 71 of the Gold (Control) Act, 1968, the 'Act' for short, and permitted redemption of the same by appellant Kuruvila on payment of a fine of Rs. 1,00,000 under Section 73, besides imposing a penalty of Rs. 50,000 on each of the two appellants under Section 74 of the Act.

2. Appellant Kuruvila is & licensed Gold Dealer and is running a Gold Dealer shop, which is a proprietary concern under the name Poornima Jewellery at Trichur. Appellant Jose is the Power of Attorney of appellant Kuruvila looking after the gold business of Kuruvila. On 17-8-1983 at about 11 a.m. the Central Excise authorities visited Poornima Jewellery, the licensed premises of appellant Kuruvila at Trichur, and seized under a mahazar the following gold and gold ornaments, which had not been accounted for in the statutory accounts:1. New gold ornaments, Bangles, Chain, Stud ring ...

2020.750 gms.

locket, Thali, cross etc.

22 ct.2. Old ornaments, bangle, stud, ring, chain etc.

...

234.800 gms.

20-21 ct.3. Melted gold ...

6.200 gms.

20-21 ct.

Appellant Jose gave a statement before the authorities on 25-8-1983 that he is conducting the gold business in Poornima Jewellery in the absence of proprietor Kuruvila and is also a Power of Attorney Holder for him. He further stated that under the said Power of Attorney he could purchase and sell gold and also write accounts and all other things. He further stated that the quantity of 2261.750 gms. of gold and gold ornaments under seizure were kept in a small black briefcase with the inscription "Poornima Jewellery" and the same was recovered from below the showcase. Jose had further stated that the gold and ornaments under seizure had been kept by him for purpose of sale without having been accounted for. One P.A. Thommachan, a relative of Kuruvila, gave a statement before the authorities on 25-8-1983 to the effect that he is also assisting appellants Jose and Kuruvila in the gold business in Poornima Jewellery and the gold and ornaments under seizure

had not been included in the accounts of the shop. He further stated that appellant K.V. Jose has placed the gold and ornaments in the shelf at the bottom of the showcase in the shop and in a box containing rubbish in the room. He further stated that the unaccounted gold and gold ornaments under seizure were kept in the shop for purpose of sale and as per the instructions of Jose he used to buy gold from unauthorised gold dealers inside and outside Kerala and pay for the same and such gold and ornaments so purchased were sold without bills in Poornima Jewellers. Appellant Kuruvila, who was not available in the shop at the time of seizure, gave a statement before the authorities on 6-9-1983 to the effect that the gold and ornaments under seizure had not been accounted for in his jewellery shop and that 1437 gms. of old ornaments out of the ornaments under seizure were purchased at his instance by Jose and alongwith that 612 gms. of ornaments of his own were also pooled and as per his directions the entire old ornaments were given to goldsmiths for re-making new ornaments and the gold ornaments under seizure represented only those old ornaments remanufactured by the goldsmiths. It is in these circumstances, after further investigations, proceedings were instituted against the appellants and others, which eventually culminated in the present impugned order now appealed against.

3. Shri Ramachandran, the learned counsel for the appellants, submitted that so far as the seizure of primary gold of 6.200 gms. is concerned, appellant Kuruvila is in no way concerned with it and has no objection to the same being confiscated though an option to redeem the same under the impugned order has been given in his favour. The learned counsel nevertheless submitted that so far as appellant Jose is concerned, even though he has not specifically put in a plea claiming the same, he may be permitted to redeem it. It was urged that the gold and ornaments in question did not form part of the stock in trade of Poornima Jewellery and, therefore, there is no obligation cast on the licensee to account it. The learned counsel further contended that a careful reading of the statements of appellant Jose and Thommachan would reveal that appellant Kuruvila did not have any knowledge about the very presence or existence of the gold and ornaments in his licensed premises nor was he in any way responsible for the same being brought over to his licensed premises in contravention of law. The learned counsel further submitted that even it is assumed that the gold and ornaments formed part of the

stock in trade so as to be accountable in terms of Section 55 of the Act, inasmuch as they were brought into the shop only in the morning on 17-8-1983 and since the seizure took place within an hour thereafter, appellant Kuruvila cannot be proceeded against on a charge of non-accountal of the same under the Act. The learned counsel further urged that the ornaments in question belonged to appellant Kuruvila, a quantity of 1437 gms. having been bought by him as old ornaments from his partner in Abkari business and pooling the same alongwith his own family ornaments of 612 gms., the ornaments were given through Jose to certified goldsmiths for re-making new ornaments. In such a situation, the learned counsel contended, that when appellant Kuruvila was not even present in the shop and was in no way connected with the presence of the gold and ornaments in the licensed premises on the date of seizure, the ornaments belonged to him would not be liable for confiscation in terms of the proviso to Section 71 of the Act.

Alternatively, the learned counsel contended, that even if the gold and ornaments under seizure are liable for confiscation under the Act, no penalty can be imposed on appellant Kuruvila, because there is no evidence on record to indicate that he was in any way connected either as an abettor or as a principal offender in the commission of any offence under the Act in regard to the same and the proceedings being penal in nature, unless the Department by acceptable legal evidence establishes knowledge and mens rea to appellant Kuruvila in regard to the contravention of the gold ornaments no penalty is leviable under Section 74 of the Act against him. The learned counsel further submitted that the entire gold business of appellant Kuruvila was being carried on by appellant Jose as his Power of Attorney and in terms of Sections 227 and 228 of the Indian Contract Act, 1872, the principal will not be bound by the acts of the Power of Attorney, if the Power of Attorney had acted beyond the scope of the power or has committed any illegal or unlawful acts. The learned counsel further urged that in terms of a Circular issued by the Ministry of Finance, F.No.128/19/86-GC dated 6-3-1987, which the learned counsel referred to as the Amnesty Scheme, the Central Government decided that no penal action including prosecution should be initiated under the Act against a person, if the possession of gold and ornaments is declared under the Amnesty Scheme offered by the Income-tax Department, even if the quantity of gold or ornaments had not been declared under Section 16(7) of

the Gold (Control) Act. The learned counsel, therefore, urged that penal action including prosecution is directed to be waived by the said instructions or Circular, which is binding on the adjudicating authority as well as this statutory Tribunal. The learned counsel also placed reliance on various rulings of the High Courts in regard to the binding nature of the said instructions of the Finance Ministry, which we shall advert to at the appropriate place. Finally, in any event, the learned counsel urged, the quantum of fine and penalty is excessive and would warrant a reduction particularly when the purity of the gold is ranging from only 20 to 22 ct. and also because in respect of the commission of the offence penalty has been levied on the licensee as well as the Power of Attorney of the licensee.

4. Shri Bhatia, the learned Senior D.R., submitted that the gold and ornaments were actually found in the licensed premises and admittedly had not been accounted for. The learned Senior D.R. placed reliance on Section 33 of the Act and submitted that gold and ornaments found in business premises and not accounted for should be deemed to be part of the stock in trade of such dealer or held by him in his capacity as a dealer. The learned Senior D.R. further referred to the statements of appellant Jose and Thommachan and submitted that they are inculpatory in nature implicating not only themselves as being privy to the commission of offence under the Act but also implicating appellant Kuruvila, the sole proprietor of Poornima Jewellery. The learned Senior D.R. further urged that no notification is shown to have been issued under Section 5 of the Act and any administrative instructions issued by the Finance Ministry will not be binding on adjudicating authorities unless the instructions have the statutory force. Even assuming that the Amnesty Scheme would give benefits to appellant Kuruvila, the learned Senior D.R. contended, so far as the Gold (Control) Act, 1968 is concerned the applicability of the same is restricted only to the contravention under Section 16(7) of the Act and will not govern other contraventions. The learned Senior D.R. further urged that under the Amnesty Scheme the declaration alleged to have been given by appellant Kuruvila was only before the Income-tax Officer with reference to concealment of income not accounted for and there is no evidence on record to actually connect that the unaccounted income was relatable to the gold ornaments under seizure in the present case. The learned Senior D.R. further urged that the scope and ambit of Section 55 of the Act is very wide and

comprehensive and a licensed Gold Dealer is not entitled under the Act to purchase gold ornaments from persons other than a licensed dealer except in accordance with Section 31 of the Act and on the admission of appellant Kuruvila that he purchased old ornaments only for the purpose of remanufacturing new ornaments for purposes of sale should have been accounted for in terms of Section 55 and the very initial purchase of the old ornaments should be supported by proper voucher in terms of Section 55 of the Act. The learned Senior D.R. further urged that appellant Jose cannot be set up as a front or facade of appellant Kuruvila under the garb of a Power of Attorney so as to extricate himself from the clutches of law in respect of contraventions and contended that if one were to take a view that offences committed by a Power of Attorney admittedly running the gold shop of a licensed Gold Dealer would not in any way affect the principal namely the licensee, then everybody can merely set up Power of Attorney and commit contraventions under the Act and go scot-free.

The learned Senior D.R. urged that such a construction would lead to a situation of manifest absurdity or anomaly rendering the very Act itself totally unworkable enabling the offenders go scot-free as it were.

5. We have carefully considered the submissions made before us. The first question that arises for our consideration is whether the gold and ornaments were part of the stock in trade of appellant Kuruvila or that appellant Kuruvila was not in any way connected with the same as a licensed Gold Dealer. The gold and gold ornaments admittedly had not been accounted for and they were admittedly found in the licensed premises of appellant Kuruvila. The evidence bears out that the gold and ornaments were recovered from the briefcase with inscription "Poornima Jewellery" and the briefcase itself was found in the midst of rubbish. Appellant Jose has given a statement on 25-8-1983 to the effect that he was the Power of Attorney of the licensee appellant Kuruvila and was looking after the gold business in Poornima Jewellery and that the gold and ornaments under seizure were recovered from Poornima Jewellery wherein it had been kept by him for purposes of sale without being accounted for. P.A. Thommachan, a relative of Kuruvila, has also given a statement on 25-8-1983 to the effect that he also used to attend to the business of Kuruvila in the licensed premises and that the gold and ornaments

under seizure were kept in the shop for purposes of sale. He has further stated that he used to buy gold from unauthorised gold dealers inside and outside Kerala and such unauthorised gold and ornaments purchased were sold without bills in Poornima Jewellers. Appellant Kuruvila has also given a statement on 6-9-1983 admitting the fact that the gold ornaments under seizure represented old ornaments, 1437 gms. of which were purchased at his instance from his partner in Abkari business, the balance 612 gms.

being his own ornaments and as per his directions the old ornaments were remanufactured as new ornaments through goldsmiths. We have carefully gone through the statements of the said persons and we have no hesitation to hold that they are voluntary and true and prove that the gold and ornaments formed not only the stock in trade of the licensee Kuruvila but were also kept in the licensed premises in contravention of law without being accounted for in the statutory accounts only for the purpose of sale. The plea of the learned counsel that Kuruvila did not have any knowledge about the presence or existence of the gold and ornaments in the licensed premises has to be just mentioned to be discarded as utterly unacceptable. As rightly contended by the learned Senior D.R., the concern is a proprietary concern and notwithstanding the fact that the business was being managed by appellant Jose as Power of Attorney of Kuruvila it would be rather idle for one to contend that Kuruvila did not actually know what was happening in his Gold Dealer's shop. The principal is certainly bound by the acts of Power of Attorney and to contend that the principal is not bound by the acts of Power of Attorney in respect of any contraventions committed by him in the shop cannot be accepted. As rightly contended by the learned Senior D.R., if one were to adopt such a view it would only pave the way for offences being committed under the Act by all the licensees by merely creating Power of Attornies and putting them incharge of the respective licensed premises. The admitted fact remains that the gold ornaments under seizure are the result of manufacture of the same by certified goldsmiths out of the old ornaments, which were purchased at the instance of appellant Kuruvila, as stated above, including his own personal ornaments. In terms of Section 31 of the Act read with Section 55 a licensed Gold Dealer cannot buy or acquire or receive or accept any ornament or gold from a person, who is not a licensed dealer or refiner and even if he were to buy the

same from a person, who is not a dealer, it is subject to conditions stipulated in Section 31 of the Act. In the present case it is not the case of appellant Kuruvila that the new ornaments, which were manufactured out of the old ornaments purchased by him including his own ornaments, were not for purposes of sale. On the other hand in the entire records there is no plea to the effect that the new ornaments were not intended for sale. Apart from it, the nature and quantity of the ornaments are also pointers to the conclusion that the ornaments were only for purposes of sale. Therefore, if Kuruvila, the licensed dealer, has purchased or acquired possession of old ornaments, as admitted by him, it should be properly accounted for in terms of Section 55 of the Act, because the ornaments had been purchased by appellant Kuruvila only in the capacity of a licensed Gold Dealer.

Though Shri Ramachandran, the learned counsel, contended that Kuruvila did not purchase old ornaments from his partner in Abkari business in his capacity as a licensed dealer, we are at a loss to understand as to in what other capacity he has purchased the old gold ornaments and converted the same into new gold ornaments, which were brought to the licensed premises by Jose for purposes of sale without being accounted for. The quantity and nature of the ornaments, the inculpatory statements of the persons concerned, the admitted non-accountal of the same and the place of recovery, and other connected circumstances lead us to the irresistible conclusion that the gold and ornaments were kept in the licensed premises of Kuruvila as part of the stock in trade in contravention of law without having been accounted for. One other important factor to which we would like to refer in this context is the conduct of the appellants herein and also Thommachan. Even though a substantial quantity of ornaments valued at nearly about Rs. 4 lakhs has been seized by the authorities as early as on 17-8-1983, appellant Jose, the Power of Attorney of Kuruvila, would not make any statement as to how the ornaments were acquired or as to whether they formed part of the stock in trade of the business or not till after he gave a statement on 25-8-1983. Even in the statement dated 25-8-1983 he has not stated that appellant Kuruvila has absolutely nothing to do whatever with the gold ornaments in question and they had nothing to do with the stock in trade of Poornima Jewellery. The very reference by Jose in his statement that the ornaments were kept in Poornima Jewellery for purposes of sale without being accounted for would only indicate that

they formed part of the stock in trade of the licensee Kuruvila. It is conceded by the learned counsel that neither of the appellants nor Thommachan ever retracted the statement at any time.

Kuruvila being the sole proprietor of Poornima Jewellery and having come to know that substantial quantity of ornaments had been seized would not come forward to offer any explanation till 6-9-1983 and this inaction on his part for such a long time is inconsistent with his possible innocence in the matter and apart from all other things, the ornaments have been made only for purposes of sale in the shop and as such even at the time of initial purchases of old ornaments, which were done admittedly for purposes of re-manufacturing new ornaments for eventual sale, should be accounted for in terms of Section 55 read with Section 31 of the Act and Rule 13 of the Gold Control (Forms etc.) Rules, 1968, as rightly contended by the learned Senior D.R. Therefore, from any point of view the charges of contravention have been clearly established. The plea of the learned counsel that in terms of Sections 227 and 228 of the Contract Act, referred to supra, the principal would not be liable is not acceptable, because the Power of Attorney specifically entrusted with the charge of looking after the gold business has not only committed contravention himself but, as stated above, appellant Kuruvila, the principal and the licensee, was very much a party and privy to the whole act.

6. The learned counsel expatiated for a considerable length of time on the Amnesty Scheme referred to supra and contended that the impugned order itself is contrary to law. In this context we may point out that the learned counsel for the appellants did not produce before us any statutory notification issued under Section 5 of the Gold (Control) Act, 1968. We are of the view that the instructions issued by the Finance Ministry and referred to above are mere administrative and executive instructions, which will not have a binding force of a statute on adjudicating authorities exercising quasi-judicial power. On the other hand, we may usefully refer to the ruling of the Supreme Court in the case of Orient Paper Mills Ltd. v. Union of India, reported in AIR 1969 Supreme Court, 48 : 1978 (2) E.L.T. (J 345), wherein the Supreme Court has clearly held that the directions issued by the Central Board of Revenue will not bind a quasi-judicial authority in the exercise of his quasi-judicial functions. Dealing with the nature and scope of

such instructions of the Board vis-a-vis the discharge of quasi-judicial functions by appellate authorities, the Supreme Court has observed as under: "It was not denied before us that the Collector and the Central Government while deciding the appeals and the revision applications respectively functioned as quasi-judicial authorities. So far as the nature of power exercised by the Central Government under S. 36 of the Act (revisional powers) is concerned, the matter is concluded by the decision of this Court in Aluminium Corporation of India Ltd. v. Union of India - 1978 (2) E.L.T. (J 320), Civil Appeal No. 635 of 1964 D/22-9-1965 (SC). Therein this Court held that the said power is a quasi-judicial power. There is hardly any doubt that the power exercised by the appellate authority, i.e., the Collector, under Section 35 is also a quasi-judicial power. He is designated an appellate authority; before him there was a lis between the appellant which had paid the duty and the Revenue; and his order is subject to revision by the Central Government. Therefore, it is obvious that the power exercised by him is a quasi-judicial power.

Dr. Syed Mohammed, appearing for the respondent, did not contend - and we think rightly - that the power exercised by the Collector was not a quasi-judicial power.

8. If the power exercised by the Collector was a quasi-judicial power - as we hold it to be - that power cannot be controlled by the directions issued by the Board. No authority however high placed can control the decision of a judicial or a quasi-judicial authority.

That is the essence of our judicial system. There is no provision in the Act empowering the Board to issue directions to the assessing authorities or the appellate authorities in the matter of deciding disputes between the persons who are called upon to pay duty and the department. It is true that the assessing authorities as well as the appellate authorities are judges in their own cause; yet when they are called upon to decide disputes arising under the Act they must act independently and impartially. They cannot be said to act independently if their judgment is controlled by the directions given by others. Then it is a misnomer to call their orders as their judgments; they would essentially be the judgments of the authority that gave the directions and which authority had given those judgments

without hearing the aggrieved party. The only provision under which the Board can issue directions is Rule 233 of the Rules framed under the Act. That rule says that the Board and the Collectors may issue written instructions providing for any supplemental matters arising out of these Rules. Under this rule the only instruction that the Board can issue is that relating to administrative matters; otherwise that rule will have to be considered as ultra vires Section 35 of the Act."

7. The Supreme Court in the said decision has also adverted to the earlier ruling of the Supreme Court in the case of *Mahadaya Premchandra v. Commercial Tax Officer, Calcutta*, 1959 SCR 551 = (AIR 1958 SC 667) and held that the Commercial Officer while assessing certain transactions should not have solicited instructions from the Assistant Commissioner, nor should he have acted on the basis of those instructions. It was further held that the instructions given by the Assistant Commissioner had vitiated the entire proceedings as "the procedure adopted was, to say the least, unfair and was calculated to undermine the confidence of the public in the impartial and fair administration of the sales tax department".

8. We may also refer to the ruling of the Supreme Court in the case of *Rajagopal Naidu v. State Transport Appellate Tribunal*, reported in AIR 1964 SC 1573, which struck down the Madras Government Order giving certain directions to the Transport Authorities in the discharge of their quasi-judicial functions, wherein His Lordship Gajendragadkar, C.J., speaking for the Bench, has observed:- "In reaching this conclusion, we have been influenced by certain other considerations which are both relevant and material. In interpreting Section 43-A we think, it would be legitimate to assume that the legislature intended to respect the basic and elementary postulate of the rule of law, that in exercising their authority and in discharging their quasi-judicial function, the tribunals constituted under the Act must be left absolutely free to deal with the matter according to their best judgment. It is of the essence of fair and objective administration of law that the decision of the Judge or the Tribunal must be absolutely unfettered by any extraneous guidance by the executive or administrative wing of the State. If the exercise of discretion conferred on a quasi-judicial tribunal is controlled by any such direction, that forges fetters on the exercise of quasi-judicial authority and the presence of such fetters would make the exercise of such authority completely

inconsistent with the well-accepted notion of judicial process. It is true that law can regulate the exercise of judicial powers. It may indicate by specific provisions on what matters the tribunals constituted by it should adjudicate. It may by specific provisions lay down the principles which have to be followed by the tribunals in dealing with the said matters. The scope of the jurisdiction of the tribunals constituted by statute can well be regulated by the statute and principles for guidance of the said tribunals may also be prescribed subject of course to the inevitable requirement that these provisions do not contravene the fundamental rights guaranteed by the Constitution. But what law and the provisions of law may legitimately do cannot be permitted to be done by administrative or executive orders. This position, is so well established that we are reluctant to hold that in enacting Section 43-A the Madras Legislature intended to confer power on the State Government to invade the domain of the exercise of judicial power. In fact, if such had been the intention of the Madras Legislature and had been the true effect of the provisions of Section 43-A, Section 43-A itself would amount to an unreasonable contravention of fundamental rights of citizens and may have to be struck down as unconstitutional. That is why the Madras High Court dealing with the validity of Section 43-A had expressly observed that what Section 43- A purported to do was to clothe the Government with authority to issue directions of an administrative character and nothing more. It is somewhat unfortunate that though judicial decisions have always emphasised this aspect of the matter, occasion did not arise so long to consider the validity of the Government order which on the construction suggested by the respondent would clearly invade the domain of quasi-judicial administration." 9. We shall now consider the rulings cited before us by the learned counsel. The learned counsel relied upon the following rulings:-Navnit Lal C. Javeri v. K.K. Sen.

(2) 119 I.T.R. 334 Full Bench - Kerala - C.I. T., Kerala-I v. B.M. Edward, India Sea Foods, Cochin.

(3) 128 I.T.R. 747 - Gujarat High Court - Laxmichand Hirjibhai v. C.I.T. Gujarat III.

(4) 121 I.T.R. p. 279 - Bombay High Court - Kirtilal Jaisinghlal & Co. v. C.I.T., Bombay City-I. The learned counsel contended that the ratio decidendi in the aforesaid cases is that even if administrative instructions are given by superior

officers such as Board, they are binding on the subordinate authorities, who should carry out the same and if the instructions are not carried out, it is the duty of Court to see that they are obeyed and carried out. The learned counsel further urged that if the instructions, though administrative in nature, are given to the advantage of the assesseees under the Income-tax Act, they are binding on the authorities, whereas administrative instructions, which are not beneficial or favourable to the assesseees, it is open to the assesseees to question the same. We have considered the above authorities cited before us by the Bar. In our opinion, the authorities have no application whatsoever to the facts and circumstances of this case. The above authorities are dealing with cases arising under the Income-tax Act and nowhere it is stated that instructions contrary to the provisions of law could be given to a quasi-judicial authority, which would be binding on them. On the other hand, the ratio in the said rulings is only to the effect that in respect of administrative matters the superior authorities like the Board are entitled to give instructions and such instructions will have to be carried out by the subordinate authorities. To a specific query to the learned counsel for the appellants as to whether the Amnesty Scheme on which reliance is placed, is in exercise of any statutory power, the learned counsel was not able to produce before us any statutory notification issued by Finance Ministry or any other competent authority having a binding force of law. The learned counsel submitted that it should be presumed that the instructions of the Finance Ministry should be statutory in character. We are afraid, we will not be able to accept this plea of the learned counsel. Apart from the fact that there is absolutely nothing on record nor any material produced before us to show that the instructions of the Finance Ministry by way of circular, are in exercise of any statutory power, as rightly contended by the learned Senior D.R., no order is proved to have been issued in terms of Section 5 of the Gold (Control) Act, 1968 by the Administrator. Even in terms of Section 5 of the Act the Administrator can only issue directions or orders not inconsistent with the provisions of the Gold (Control) Act, 1968 and only for purpose of carrying out the provisions of this Act.

We also note that the instructions under the Amnesty Scheme referred to and relied upon by the learned counsel will not govern the charges of contravention in the present case because it is specifically stated therein that "no penal action

(including prosecution) may be initiated under the provisions of Gold (Control) Act, 1968, against a person if the possession of the Gold and gold ornaments is, declared under the Amnesty Scheme offered by the Income-tax Department, even if the quantity of gold or gold ornaments had not been declared under Section 16(7) of the Gold (Control) Act, hitherto." It should be noted that no allegations under Section 16(7) have been levelled against the appellant at all in the show cause notice much less any penal consequences visited on the appellants for any contravention thereof.

In respect of the applicability of the Amnesty Scheme clarifications have been issued by the Central Board of Direct Taxes as under : (Circular No. 451, dated 17-2-1986)- "Question No. 12:- Can immunity given by the circulars be availed of by assesseees whose premises have been searched by the tax authorities? In the present case the seizure of the gold ornaments is by way of search of the licensed premises of appellant Kuruvila. The Amnesty Scheme, which was properly known as Voluntary Disclosure Scheme, was only intended to grant amnesty in cases where persons voluntarily came forward to disclose the concealed income. In the present case admittedly in respect of the gold and ornaments under seizure there was no declaration or disclosure at all prior to seizure of the same by the authorities from the licensed premises of appellant Kuruvila. In respect of concealed income or gold unearthed consequent of search and seizure in 1983, the very Voluntary Disclosure Scheme of 1986 would have neither any relevance nor any application and this is made abundantly clear by the clarificatory note of the Central Board of Direct Taxes extracted above. Therefore, we also agree with the reasoning given by the adjudicating authority under the impugned order with reference to the non-applicability of the Amnesty Scheme to the appellant Kuruvila herein. Therefore, on consideration of the entire evidence on record, we hold that the charges of contravention against the appellants have been clearly brought home and in this view of the matter we confirm the findings of the adjudicating authority under the impugned order.

10. So far as appellant Kuruvila is concerned, there is a disclaimer with reference to the primary gold under seizure. The learned counsel made a faint attempt to claim the primary gold on behalf of appellant Jose and pleaded for redemption of

the same. Appellant Jose admittedly has not made a claim for the same at any time till now and even in the appeal before us he has not claimed it. Therefore, we reject the claim of appellant Jose. Though there is a disclaimer by appellant Kuruvila of the primary gold before us, under the impugned order redemption of the same has been permitted by him. There is no cross objection by the Department against that part of the order. In such a situation we record the disclaimer of Kuruvila and leave the issue as such.

11. We note that the purity of the gold and ornaments is only 20 to 21 ct. and keeping this in mind and also the value of the same at Rs. 3,93,458.25 we reduce the quantum of fine from Rs. 1,00,000 to Rs. 75,000 (Rs. Seventy five thousand). We reduce the penalty on appellant Kuruvila from Rs. 50,000 to Rs. 25,000 (Rs. Twenty-five thousand) and reduce the penalty on appellant Jose from Rs. 50,000 to Rs. 10,000 (Rs. Ten thousand).

12. Except for the above modifications, the appeals are otherwise dismissed.

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