Pushpa Devi Vs. Union of India (Uoi)

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Court : Rajasthan

Decided On : Jul-28-1983

Reported in : 1984(15)ELT72(Raj); [1985]156ITR864(Raj); 1983WLN(UC)279

Judge : S.K. Mal Lodha, J.

Acts : Income Tax Act, 1961 - Sections 132(1) and 132(5); Gold (Control) Act, 1968 - Sections 66; Wealth Tax Act, 1957

Appeal No. : S.B. Civil Writ Petition Nos. 951 and 1492 of 1981

Appellant : Pushpa Devi

Respondent : Union of India (Uoi)

Advocate for Def. : J.P. Joshi and; B.R. Arora, Advs.

Advocate for Pet/Ap. : B.L. Maheswari, Adv.

Judgement :

S.K. Mal Lodha, J.

1. This order will dispose of S. B. Civil WritPetitions Nos. 951 of 1981 and 1492 of 1981 filed by the petitioner,Smt. Pushpa Devi.

2. The petitioner is an assessee under the Wealth-tax Act, 1957. Her status is that of an individual. At the time of the assessment for the year 1967-68, the petitioner

explained the source of acquisition of 150 tolas of gold ornaments by stating that they were received by her from her mother, mother-in-law and other relatives and also on the occasions of birth of child, marriage of other relatives, etc. The Wealth-tax Officer, by his order dated February 10, 1969, assessed the petitioner for a total wealth amounting to Rs. 1,52,889 which included the value of the said ornaments. The petitioner has been filing the returns for the purposes of assessment under the provisions of the Wealth-tax Act and the assessments have been completed up to the assessment year 1976-77 and the assessing authorities throughout accepted the declaration of the said gold ornaments as her wealth. The petitioner's husband is Shyam Sundar Dhoot. He is a separate assessee under the provisions of the Wealth-tax Act as well as the Income-tax Act (No. XLIII of 1961) (for short, ' the Act '). The mother-in-law of the petitioner, Smt. Rukma Bai Dhoot, was also assessed separately under the Wealth-tax Act. Both of them were regularly submitting separate returns and paying taxes as per the assessment orders duly passed in their cases from time to time. According to the petitioner, she owned and possessed 150 tolas of old gold ornaments disclosed in the returns. The petitioner's husband and her mother-in-law possessed 150 tolas and 200 tolas of gold ornaments, respectively.

3. A search under Section 132(1) of the Act was commenced in the case of the petitioner's husband on August 23, 1979. The petitioner, her husband and their children and mother-in-law were living in a common house. During the course of search of the residential premises and lockers, the gold ornaments belonging to the petitioner and her mother-in-law were counted as if they belonged to the petitioner's husband. They were seized by the searching authority. The statement of the petitioner's husband was recorded on August 23, 1979, by the authorised officer. At the time of the statement, it was stated by the petitioner's husband that he, the petitioner, and her mother-in-law owned ornaments weighing 150 tolas, 150 tolas and 200 tolas, respectively, and they were duly declared and assessed in their wealth-tax assessments. A notice under Section 132(5) of the Act read with Rule 112A of the Income-tax Rules, 1962 (for short, 'the Rules of 1962'), was issued on September 1, 1979, and served upon the petitioner's husband on September 3, 1979. A reply was filed to the notice on behalf of the petitioner's husband. The Income-tax Officer, Special Investigation Circle-II, Jodhpur (for

short, ' the Income-tax Officer ' herein) after seizure made an enquiry under Section 132(5) of the Act and he, vide his order (annexure I) dated November 16, 1979, held, after verifying the wealth-tax record of the petitioner, that the contention of her husband was correct and 150 tolas of gold ornaments belonging to the petitioner which were seized along with the ornaments owned by her husband, Shyam Sundar Dhoot, should be released to her on request. By order, annexure 1, 200 tolas of gold ornaments belonging to the mother-in-law of the petitioner were also released. An application was filed for the release of the gold ornaments and thereafter reminder was also submitted for their release immediately. A detailed representation was submitted on September 13, 1980. It was stated that if the said ornaments are not released within the period mentioned therein, the petitioner will be free to file suitable petition before the Rajasthan High Court. Despite repeated requests, representations and approaches made on behalf of the petitioner for the release of the gold ornaments to which she was entitled, when they did not bear any fruit and no delivery was effected, the petitioner filed the writ petition on May 27, 1983, which was registered as S. B. Civil Writ Petition No. 951 of 1981, It was prayed that an appropriate writ, direction or order for the delivery of the gold ornaments in pursuance of the order, annexure 1, may be issued. The Income-tax Officer filed reply to the writ petition. It was averred on the basis of the complete correspondence which was exchanged between the petitioner and the Income-tax Officer that it was on account of the delay caused by the petitioner in not explaining the variation between the two lists that the ornaments could not be returned to her. It may be mentioned that one list was submitted by the petitioner with the wealth-tax return and the other along with the affidavit. There were discrepancies in the two lists and as she did not appear to explain the discrepancies, the ornaments were not returned. It was submitted that it was on account of the delay caused by the petitioner by not explaining the discrepancies in the two lists, that the delivery could not be made.

4. In S.B. Civil Writ Petition No. 1492 of 1981, it has further been stated that during the course of enquiry under Section 132(5) of the Act, it came to be known that the authorities under the Gold (Control) Act (No. XLV of 1968) (hereinafter referred to as ' the Act of 1968 '), were also contemplating to seize the gold ornaments in question as soon as the same were released. It has been alleged that the

petitioner also came to know that the Income-tax Officer was directed not to release the aforesaid gold ornaments till the concerned authorities under the Act of 1968 were informed and the release, if necessary, be done in their presence. The petitioner was, therefore, advised to submit an application before the concerned authority under the Act of 1968. A detailed representation was submitted to the Assistant Collector, Excise and Customs, Jodhpur, on February 18, 1980, who is the concerned authority duly appointed under the Act of 3968. It was stated in the representation that under Section 16 of the Act of 1968, as the petitioner owned 150 tolas of gold ornaments, she was not required to submit any declaration and, therefore, no action under Section 66 of the Act of 1968 for seizure is warranted. An objection was also raised that having regard to the definition of ' family ' as contained in Section 16(6) of the Act of 1968, it was not necessary to make any declaration as the weight of the gold ornaments possessed by them are not more than 4,000 gms. As there was apprehension that these gold ornaments may be seized, it was prayed that steps for the seizure of the gold ornaments by the Central Excise authorities may not be taken. No reply was received to the representation, annexure 2. Thereafter, the petitioner submitted a representation dated April 3, 1980, to the Collector, Central Excise and Customs, Jodhpur. Copy of the order dated November 16, 1979, was also enclosed. It was stated therein that in the absence of any breach of the provisions under the Act of 1968, the action proposed to be taken for the seizure of the gold ornaments may be withdrawn. 'No reply was received by the petitioner. Ultimately, on December 26, 1980, the petitioner submitted an application to the Assistant Collector, Central Excise and Customs, Jodhpur, who is the authority appointed under the Act of 1968 with Form No. G. 53 prescribed under the rules framed under the Act of 1968 duly filled and signed in triplicate. A declaration in Form No. G. 53 together with other documents was submitted by the petitioner with an object that the concerned authorities may be satisfied that the said gold ornaments which may otherwise be considered as being owned or in possession, custody or control of the husband of the petitioner is not correct. The Income-tax Officer was informed after some reminders, vide letter No. 680, dated January 8, 1981, that the locker in which the seized gold ornaments are lying would be operated on January 21, 1981. The petitioner received letter No. 722, dated January20, 1981, by which she was informed that the keys of the locker were not available as such operation of the locker has been postponed to January 30, 1981. Nothing was done on January 30, 1981. The petitioner filed S. B. Civil Writ Petition No. 951 of 1981 in this court praying for an appropriate writ, order or direction for the release of the said gold ornaments as aforesaid. S.B. Civil Misc. Stay Petition No,881 of 1981 was also filed. S.B. Civil Writ Petition No. 951 of 1981 was admitted and notice of the stay petition was issued. After notice, the stay petition was heard on July 13, 1981, and the Income-tax Officer was directed to return the ornaments seized from the petitioner within 15 days from that date. The petitioner, after the passing of the order on July 13, 1981, submitted an application on July 17, 1981, before the Income-tax Officer mentioning the contents of the interim order. He was requested to return the seized gold ornaments. The Income-tax Officer informed the petitioner, vide his letter dated July 25, 1981, to come to his office in connection with the release of the gold ornaments, on July 27, 1981. The Income-tax Officer brought the gold ornaments from the bank lockers and kept the same in his office. The petitioner came to know there that the Superintendent, Central Excise and Customs, Jodhpur, who is an authority under the Act of 1968, was there with nearly six to seven inspectors and three guardsmen with their rifles were sitting in the room of the Income-tax Officer. On inquiry, it was revealed that the Income-tax Officer concerned conveyed the information to the said authority and it was in pursuance of that information having been conveyed to them that the authority under the Act of 1968 was present in the office. The petitioner objected to all this but it was not heeded. Thereafter, the petitioner submitted a representation in writing to the Income-tax Officer stating that such an action was illegal and punishable under Section 280 of the Act. A representation was also submitted to the Superintendent, Central Excise and Customs, Jodhpur, on July 27, 1981, stating therein that the ornaments which were going to be released are exclusively owned and had been in the possession, custody or control of her prior to the seizure and that she is the exclusive owner and that they had nothing to do with her husband. The Superintendent refused to accept the representation. It was, therefore, sent to the office of the Assistant Collector, Central Excise and Customs, Jodhpur, and the authority under the Act of 1968. The Superintendent was asked by the Income-tax Officer to sit just outside his room within the office premises keeping posted his guard inside the room so that the moment the gold ornaments were released, the same may be seized by them. The Income-tax Officer on a request being made by the petitioner to arrange for the release of the gold ornaments, the petitioner was directed to come to his office on July 28, 1981. On that day also, the same incident was repeated. Because of the aforesaid events, the petitioner thought that her ornaments were not going to be released in pursuance of the order passed by the High Court. The petitioner's case is that there has been no breach of the provisions of the Act and, therefore, the authorities under the Act of 1968 have no jurisdiction to seize the gold ornaments under Section 66 of the Act of 1968. She, therefore, filed the writ petition on August 26, 1981, praying that an appropriate writ in the nature of prohibition may be issued restraining the non-petitioners, inclusive of the Collector, Assistant Collector and the Superintendent from effecting seizure of the gold ornaments weighing 150 tolas being in her possession, custody or control, which were seized by the Income-tax Authorities at the time of raid and which were ordered to be released by this court on July 13, 1981.

5. Show-cause notice was ordered to be issued on July 27, 1981. In pursuance of that reply has been filed on behalf of non-petitioners Nos. 1 to 4 (Union of India, Collector, Assistant Collector and Superintendent) reserving right to file final reply. The main ground taken in the reply is that the family of Shyam Sundar Dhoot (husband of the petitioner) consists of his wife, and his children and it possessed and had in custody the gold ornaments of more than 4,000 grams gold and, thus, in this way there has been contravention of Section 74 of the Act of 1968, which is punishable. According to the aforesaid non-petitioners Nos. 1 to 4, the total quantity of gold seized by the Income-tax Department from the possession, custody and control of Shyam Sundar Dhoot exceed the permissible limit given under the Act of 1968 and, as such, the non-petitioners Nos. 1 to 4 are well within their jurisdiction to proceed against the petitioner.

6. Rejoinder was filed on April 26, 1982.

7. Learned counsel for the parties stated before the court on May 5, 1982, that in view of the controversy involved in the writ petition and in the circumstances of the

case, the writ petition may finally be disposed of at the admission stage. They also submitted that the pleadings of the parties are complete in all respects. Mr. B. L. Maheswari submitted that he wants to file one list of ornaments and for that he wanted time. That list has been filed on August 20, 1982.

8. I have heard Mr. B. L. Maheswari for the petitioner and Mrs. J. P. Joshi for the non-petitioner.

9. Learned counsel submitted that the said gold ornaments of 150 tolas belong to the petitioner and as there was no breach of any of the provisions of the Act of 1968, the authorities under the Act of 1968 had no jurisdiction to seize them under Section 66 of the Act of 1968.

10. Chapter XII of the Act of 1968 deals with entry, search, seizure and arrest. Power to seize is conferred by Section 66 of the Act of 1968. Material portion of Section 66 is as under :

' 66. Power to seize.--(1) If any Gold Control Officer has reason to believe that in respect of any gold any provision of this Act has been, or is being, or is attempted to be, contravened, then, he may seize-- (a) such gold along with the package, covering or receptacle, if any (and the contents thereof), in which the gold is found ;......'

11. The pre-requisite condition for the application of Section 66 is the reasonable belief that the provisions of the Act of 1968 have been or are being or are attempted to be contravened. In other words, the power under Section 66 extends to the seizure of such gold in respect of which contravention has either been made or is about to be made.

12. The expression 'reason to believe' was used in Section 34 of the Indian Income-tax Act, 1922.

13. It came up for consideration in Calcutta. Discount Co. Ltd. v. ITO : [1961]41ITR191(SC) . It was held therein that this expression means a belief in good faith and not a mere pretence and that it did not mean a purely subjective satisfaction of the officer concerned. While considering Section 178A of the Sea

Customs Act, 1878, it was observed in Collector of Customs v. Nathella Sampathu Chetty, : 1983ECR2198D(SC) as follows :

'......it would on the terms of the section, have to be satisfied that the seizure was made 'in the reasonable belief that the goods seized were goods that had been smuggled'. At that stage the enquiry is not and cannot be confined as to whether the seizing-officer bona fide entertained the belief, but must necessarily extend to an examination of the grounds upon which that belief was entertained with a view, to ascertain whether the belief was reasonable.'

14. It was also so held in Narayanappa v. CIT : [1967]63ITR219(SC) . After examining Section 110 of the Customs Act, 1962, their Lordships of the Supreme Court in Assistant Collector of Customs v. Charan Das Malhotra, : 1973ECR1(SC) ruled that the expression ' reason to believe ' in that section was not absolutely subjective inasmuch as the reasons for the belief have to be relevant and not extraneous and the principle enunciated in Narayanappa v. CIT : [1967]63ITR219(SC) was applied.

15. In the light of the principles laid down by their Lordships of the Supreme Court in the aforesaid decisions, I am of the considered opinion that Section 66 of the Act of 1968 does not permit an indiscriminate seizure with a view to fishing out material to form a belief and justify it by reasons culled out therefrom. It is thus clear that before taking action under Section 66(1) of the Act of 1968, existence of reasonable belief is essential. Before exercising the power to seize gold in respect of the provisions of the Act of 1968, there should be reasonable belief that the provisions are contravened or attempted to be contravened and in that contingency what is to be considered is whether a reasonable person could reasonably form such an opinion. In this case, the defence of the non-petitioners Nos. 1 to 4 are disclosed in the reply, which is that the gold ornaments which were to be released by the Income-tax Department formed part of the gold ornaments seized from the residential premises of Shyam Sunder Dhoot from locker No. 280 of the Central Bank of India and that the weight of the gold was more than the prescribed limit. A perusal of the order, annexure 1, passed under Section 132(5) of the Act read with rule 112A of the Rules of 1962, shows that it was held therein

that 150 tolas of gold ornaments belonging to the petitioner seized along with the ornaments of Shyam Sunder Dhoot should be released to her on request.

16. Section 16 of the Act of 1968 deals with declaration as to articles or ornaments. Material portion of it is as under :

'16. Declarations as to articles or ornaments.--(1) Save as otherwise provided in this Chapter, every person who owns, or is in possession, custody or control of, any article or ornament at the commencement of this Act, or acquires the ownership, possession, custody or control of any article or ornament thereafter, shall make, within thirty days from such commencement or from such acquisition, as the case may be, or within such further period as the Administrator may, on sufficient cause being shown allow, a declaration in the prescribed form as to the quantity, description and other prescribed particulars of any article, or ornament or both, owned, possessed, held or controlled by him ;......

(5) No declaration referred to in Sub-section (i) or Sub-section (3) shall be required to be made,--......

(b) in relation to any ornaments, or both articles and ornaments, where both articles and ornaments are owned, possessed, held or controlled, unless the total weight of such ornaments or both articles and ornaments, as the case may be, owned, possessed, held or controlled by,--... (ii) a family exceeds four thousand grammes :......

(6) For the purposes of this section, ' family ' shall be deemed to consist of,--

(i) the husband, wife and one or more minor children, or...'

17. According to Section 16{5), the total weight of gold ornaments belonging to the petitioner and her husband, Shyam Sunder Dhoot, was 300 tolas (i.e., 3,499.14 grams), which is less than 4,000 grams which is exempted under Section 16(5) of the Act of 1968. There is nothing on the record on the basis of which it could be said that there was any reason to believe that in respect of the gold owned or which was in possession, custody or control of the petitioner or her husband, any possession of the Act of 1968 has been or is being attempted to be contravened.

There is nothing to show that any breach of any of the provisions of the Act of 1968 has been committed. The non-petitioners had no power to seized the gold ornaments of 150 tolas in respect of which no contravention of the provisions of the Act of 1968 has been done. The power of seizure in the absence of the condition precedent being fulfilled cannot be exercised.

18. In Kashi Nath v. Collector, Central Excise, : 1973ECR7(Allahabad) the learned judge observed as under (p. 24):

' In the absence of the existence of the condition precedent, power of seizure exercised by the respondents is without jurisdiction. The respondents have acted in excess of their authority and beyond their jurisdiction in seizing the ornaments in respect of which no contravention of Section 55 has been alleged or ascertained. The power of seizure is a serious inroad on the fundamental right of property of a citizen. The authorities exercising the power of seizure have to act strictly according to law.'

19. Special appeal against the aforesaid decision was dismissed. The Division Bench in Collector, Central Excise v. .L, K. N. Jewellers, : AIR1972 All231 observed as follows (p. 236):

' The power of seizure under Section 66 of the Act has, therefore, to be exercised strictly according to the provisions of that section.'

20. As a result of what has been stated above, S.B. Civil Writ Petition No. 1492 of 1981 deserves to be accepted.

21. Coming to S. B. Civil Writ Petition No. 951 of 1981, in which a prayer has been made that the Union of India and the Income-tax Officer may be directed to deliver the ornaments seized during the raid which was conducted on August 23, 1979, an order for release has already been passed under Section 332(5) of the Act read with Rule 112A of the Rules of 1962 on November 16, 1979. An interim order was made by this court for the return of the ornaments to the petitioner on July 13, 1981, but they have not been returned so far to the petitioner. In the reply to the writ petition, it has been stated that until and unless it is determined whether the

ornaments belong to .the petitioner, they cannot be delivered to her. It has been further stated that a notice was issued under Section 132(1) of the Act to the petitioner to appear before the Income-tax Officer and explain the variance in the two lists so that ornaments may be returned to her, but on one pretext or the other, she refused to appear before the Income-tax Officer. This objection taken by the Income-tax Officer need not detain me for the reason that in the order, annexure I, under Section 132(5) of the Act dated November 16, 1979, it has been stated :

' Regarding Smt. Puspha Devi, it is argued, vide A.Rs. letter dated 3-11-1979, that at the time of assessment for 1967-68, the then counsel, vide his letter dated 11-3-1968, explained the source of acquisition of 150 tolas of gold ornaments by stating that these ornaments were received by the assessee from her mother, mother-in-law and other relatives as well as on the occasion of marriage, birth of children, marriage of other relatives, etc. It was also explained in that letter that it was difficult to reconcile the date on which a particular ornament was received by her. I have verified the wealth-tax records of Smt. Pushpa Devi and the contention of the assessee is found to be correct. Therefore, it is held that 150 tolas of gold ornaments belonging to Smt. Pushpa Devi Dhoot seized along with ornaments of Shri S. S. Dhoot should be released to her on request.'

22. The Income-tax Officer has no authority to retain the gold ornaments of 150 tolas belonging to the petitioner which were seized along with the ornaments of Shyam Sundar Dhoot at the time of the raid under Section 132(1) of the Act. He is directed to deliver the ornaments belonging to the petitioner in pursuance of the order, annexure 1, dated November 16, 1979.

23. The result is that S.B. Writ Petition No. 1492 of 1981 is allowed and the non-petitioners [Union of India, the Collector (an authority appointed under the Act of 1968), Assistant Collector (an authority appointed under the Act of 1968), Central Excise and Customs, Jodhpur, and the Superintendent (Preventive) (an authority appointed under the Act of 1968), Central Excise and Customs Jodhpur] are restrained from effecting the seizure of 150 tolas of gold ornaments of the petitioner under Section 66 of the Act of 1968.

24. S.B. Civil Writ Petition No. 951 of 1981 is also allowed and the non-petitioners (Union of India and the Income-tax Officer, S.I. Circle-II, Jodhpur) are directed to deliver the gold ornaments weighing 150 tolas belonging to the petitioner, which were seized at the time of raid under Section 132(1) of the Act.

25. The parties shall bear their own costs.