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Court : Chennai

Decided On : Jul-05-1990

Reported in : 1991(52)ELT161(Mad)

Judge : P.S. Mishra, J.

Acts : [Customs Tariff Act, 1975](#)

Appeal No. : Writ Petition Nos. 2110 to 2115 of 1989 and 2169 to 2172/89

Appellant : S. Lalitha

Respondent : Union of India

Advocate for Def. : Shri K. Jayachandran, ;A.C.G.S.C.

Advocate for Pet/Ap. : Shri S. Ramani Natarajan and ;S. Jotheraman, Advs.

Judgement :

ORDER

1. Heard learned Counsel for Petitioners. These matters have been posted for hearing after notice of motion. Since I was of the opinion that any interim order against the impugned notices would delay disposal of proceedings which, in the public interest, should be disposed of as expeditiously as possible, I have heard the learned Counsel for the petitioners on the merit of the Writ Petitions and since after hearing the learned Counsel for the petitioners I have come to the conclusion

that the petitions are not maintainable, I do not propose to postpone disposal of these cases to any future date.

2. The petitioners herein have questioned the validity of notices issued under Section 6 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.

'Whereas, I being the Competent Authority under Section 5 of the Smugglers & foreign Manipulators (Forfeiture of Property) Act, 1976 (13 of 1976), have on the basis of relevant information available to me, reason to believe that the property described in the Schedule annexed hereto which is/are held by you is/are illegally acquired property within the meanings of clause (c) of Sub Section (1) of Sec. 3 of the said Act.

Now, therefore, in pursuance of sub-section (1) of Section 6 of the said act, I hereby call upon you by this notice to indicate to me within 35 days of the service of this notice, the sources of your income, earnings or assets, out of which or by means of which you have acquired the aroused property, the evidence on which you rely and other relevant information and particulars and to show cause why the aforesaid property should not be declared to be illegally acquired property and forfeited to the Central Government under the said Act'.

3. In W.P. 2110 of 1989, the notice was issued on 3.11.1979 and in that case the petitioner has come to this Court only after a decade from the date of notice. In other cases the notices were issued on 28.7.1988.

4. The Act states that its provisions shall apply only to the persons specified in sub-section (2) of Section 2 which in turn covers every person who has been convicted under the Sea Customs Act, 1878, or the Customs Act, 1962, of an offence in relation to goods of a value exceeding one lakh of rupees; or who has been convicted under the Foreign Exchange Regulation Act, 1947, or the Foreign Exchange Regulation Act, 1973, of an offence, the amount or value involved in which exceeds one lakh of rupees; or who having been convicted under the Sea Customs Act, 1878, or the Customs Act, 1962, has been convicted subsequently under either of those Acts; or who having been convicted under the Foreign

Exchange Regulation Act, 1947 or the Foreign Exchange Regulation Act, 1973, has been convicted subsequently under either of those Acts and every person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, is such person to whom the Act shall apply. It also adds to that category every person who is a relative of a person who has been convicted under any of those Acts with the exception of transferees of such properties in good faith for consideration. Under the Explanations appended to the said provision, 'relative' in relation to a person has been defined to mean spouse of such a person, brother or sister of such a person, brother or sister of the spouse of such a person, any lineal ascendant or descendant of such a person any lineal ascendant or descendant of the spouse of such a person and spouse of such brother, sister, lineal ascendant or descendant as the case may be as also any lineal descendant of such brother or sister of such a person. 'Associate' of such a person has been defined to mean any individual who had been or is residing in the residential premises (including out houses) of such person; any individual who had been or is managing the affairs or keeping the partnership firm or private company within the meaning of the Companies Act, 1956, of which such person had been or is a member, partner or director; any individual who had been or is a member, partner or director of an association of persons, body in individuals, partnership firm, or private company within the meaning of the Companies Act of which such person had been or is a member, partner or director of such association, body, partnership firm or private company; and person who had been or is managing the affairs, or keeping the accounts of an association of persons, body of individuals, partnership firm, or private company referred to above, and the trustee of any trust where the trust has been created such person or the value of the assets contributed by such person to the trust amounts, on the date on which the contribution is made, to not less than twenty per cent, of the value of the assets of the trust on date. In addition to the above, 'associate' in relation to a person also means, where the competent authority, for reasons to be recorded in writing, consider that any properties of such person are held on his behalf by any other person, such other person. The provision with respect of definitions also defines 'illegally acquired property' in relation to any person to whom the Act applies, thus :-

'(c) 'legally acquired property', in relation to any person to whom this Act applies, means :-

(i) any property acquired such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to any activity prohibited by or under any law for the time being in force relating to any matter in respect of which Parliament has power to make laws; or

(ii) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets in respect of which any such law has been contravened; or

(iii) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets the source of which cannot be proved and which cannot be shown to be attributable to any act or thing done in respect of any matter in relation to which Parliament has no power to make laws; or

(iv) any property acquired by such person, whether before or after the commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property referred to in sub-clauses (i) to (iii) or the income or earnings form such property; and includes :-

(A) any property held by such person which would have been, in relation to any previous holder thereof, illegally acquired property under this clause if such previous holder had not ceased to hold it, unless such person or any other person who held the property at any time after such previous holder or, where there are two or more such previous holders, the last of such previous holders is or was a transferee in good faith for adequate consideration;

(B) any property acquired by such person, whether before for after the commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property falling under item (A), or the income or earnings therefrom'.

5. Since these cases are confined to the legality or otherwise of the notices, I can straightaway quote Section 6 of the Act :-

'6(1) If, having regard to the value of the properties held by any person to whom this Act applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, and any other information or material available to it as a result of action taken under Section 18 or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within such time as may be specified in the notice, which shall not be ordinarily less than thirty days, to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central government under this Act.

(2) Where a notice under Sub-section (1) to any person specified any property as being held on behalf of such persons by any other person, a copy of the notice shall also be served upon such other person'.

6. Learned counsel for the petitioners had attained the notices alleging

(i) unless it is shown that the property in question is held by any person to whom this Act applies either by himself or through any other person on his behalf, no notice under Section 6 can be issued; and

(ii) in any case, the competent authority under the Act was required to disclose the substance of the material upon which he came to believe that the property in question was one for which Section 6 notice would issue.

7. So far as these contentions are concerned, the answer can be found in the language of Section 6 itself. The condition precedent to the notice under Section 6 is that the reason for such belief is to be recorded in writing that all or any of such

properties are illegally acquired properties including that such properties were held by any person to whom the Act applied either by himself or through any other person on his behalf. The argument that notice should contain a precise information as to the satisfaction meaning thereby the reasons for such belief has to be rejected forthwith, such belief the competent authority was required to record in writing. If there is no such record available, the notice is without jurisdiction. If such a record is available the notice cannot be challenged merely on the grounds that it has not referred to the reasons of the belief that the property was held by such person to whom the Act applied, either by himself or through any other person on his behalf.

8. I have also taken notice of the contents of the impugned notice. It cannot be called all that vague. It gives sufficient indication of the nature of the satisfaction of the competent authority. It has made a specific mention of the application of clause (c) of sub-section (1) of Section 3 will evidently enable any person receiving notice that he is either one such person who himself had been convicted as aforesaid or he falls, in one or the other category which shall attract the law. If the person receiving notice is not one to whom the Act would apply, he may appear and show cause and state that he did not come under the Act. If the satisfaction of the competent authority has to be questioned, that can be questioned only by questioning the reasons recorded in writing by him. The order of the competent authority has not been challenged.

9. In W.P. No. 2110 of 1989, the notice was issued in 1979, though in other cases the notices were issued in 1988. It is not difficult to see why the petitioner in that case did not come to this court or any other competent court soon after she received the notice. Some sort of reply, it is said, was given on her behalf to the competent authority. If she had already shown cause, she must follow the course and allow the proceedings to come to an end in accordance with law. If she is still aggrieved her remedy is not barred. This Court's doors shall remain open. In the even of any order to forfeit any property belonging to the petitioners, they shall not be remediless.

10. In view of the above, I am not inclined to admit the petitions to hearing. The Writ Petitions are accordingly dismissed. Consequently, W.P. Nos. 3214 to 3219 of 1989 and 3302 to 3305 of 1989 are dismissed.

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