

SUSHILA N. RUNGTA (D) LRS.

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v.

THE TAX RECOVERY OFFICER-16(2) AND ORS.

(Civil Appeal Nos. 10824 of 2018)

OCTOBER 30, 2018

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[R. F. NARIMAN AND NAVIN SINHA, JJ.]

Gold (Control) Act, 1968: Repeal of the Act without the saving clause – Applicability of s.6 of the General Clauses Act – Held: The statement of objects and reasons makes it clear that over 22 years, the results achieved under the Act were not encouraging and the desired objectives for which the Act was introduced have failed – This being the case, the repeal simpliciter will not attract the provisions of s.6 of the General Clauses Act as a contrary intention is very clearly expressed in the statement of objects and reasons to the 1990 repeal Act – General Clauses Act – s.6 – Repeal – Defence of India Rules – Gold (Control) Repeal Act, 1990.

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Allowing the appeals, the Court

HELD: 1. The statement of objects and reasons makes it clear that over 22 years, the results achieved under the Act have not been encouraging and the desired objectives for which the Act has been introduced have failed. Following the advice of experts, who have examined issues related to the Act, the objects and reasons goes on further to state that this Act has proved to be a regressive measure which has caused considerable dissatisfaction in the minds of the public and hardship and harassment to artisans and small self-employed goldsmiths. [Para 6][1151-D-E]

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2. The repeal simpliciter, in the instant case, does not attract the provisions of Section 6 of the General Clauses Act as a contrary intention is very clearly expressed in the statement of objects and reasons to the 1990 repeal Act. [Para 7][1151-E-F]

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New India Assurance Co. Ltd. v. C. Padma and Another (2003) 7 SCC 713 : [2003] 3 Suppl. SCR 677; M.S. Shivananda v. Karnataka State Road Transport Corporation and Others [1980] 1 SCR 684 – relied on.

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A *State of Punjab v. Mohar Singh* [1955] 1 SCR 893 – referred to.

Director of Public Works & Anr. v. Ho Po Sang & Ors. [1961] 2 All. ER 721 – referred to.

Case Law Reference

B [1955] 1 SCR 893 referred to Para 5
 [2003] 3 Suppl. SCR 677 relied on Para 7
 [1980] 1 SCR 684 relied on Para 9

C CIVIL APPELLATE JURISDICTION: Civil Appeal No. 10824 of 2018.

From the Judgment and Order dated 22.08.2016 of the High Court of Judicature at Bombay in Writ Petition No. 793 of 2005.

With

D C.A. Nos. 10830, 10829, 10831, 10825, 10833, 10832, 10826, 10827, 10828 of 2018 and 723 of 1973.

R. Venkataramani, Sr. Adv., Shivaji M. Jadhav, Yashraj Bundela, Praveen Vignesh, Ms. Astha Deep, Aditya Khanna for M/s. S. M. Jadhav and Company, Advs. for the Appellant.

E Rupesh Kumar, Ms. Sadhana Sandhu, Shreyash Bhardwaj, Mrs. Anil Katiyar, Advs. for the respondent.

The Judgment of the Court was delivered by

R. F. NARIMAN, J.

F Civil Appeal No. 723/1973:

1. In this appeal, an order dated 03.01.1970 was passed by the Collector of Central Excise in which, it was ordered as follows:-

G “17. In view of the above-mentioned facts, the party charged is entitled to the benefit of the amnesty granted by the Government. Even though he had initially failed to declare the gold, time was available to him up to 31.5.66 to invest the gold into gold bonds and his intentions would have materialised but for the fact that seizure of gold prevented him from tendering the Gold to the Bank, as it was not in his possession at that time.

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18. While intention to invest the gold in gold bonds is conceded failure to declare was, no doubt, there. He was required by law to declare his gold to the Government. Since he did not declare this gold, even though he is given the benefit of the gold bond scheme, he has rendered himself liable to punishment for not declaring his gold, at the appropriate time, as required by law.

19. Considering all the facts and circumstances of the case and weighing the merits of the evidence available on record, I order that the gold shall be released to the party charged for invest in gold bond in pursuance of the application tendered by him to the State Bank of Indore in 1965.

20. I also order that for failure to declare the gold in his possession, which involves contravention of gold control rules, I impose upon him a penalty of Rs.25,000/- (Rupees twenty-five thousands only) under Rule 126-I(16) of the Gold Control Rules, 1962 (Corresponding to Section 74 of the Gold Control Act, 1968)”

2. Against the aforesaid order, an appeal was dismissed on 08.02.1971. Exercising *suo motu* powers under the Defence of India Rules, a show cause notice dated 01.06.1971 was issued in which it was sought to confiscate the items of gold and enhance penalty that had been imposed. This show cause notice was challenged by the grandfather of the present petitioner in a writ petition that was ultimately dismissed by the Delhi High Court on 29.09.1972. This appeal is an appeal from the aforesaid judgment. This Court, on 09.08.1973, passed the following order:

“Upon hearing the counsel for the parties, while counsel for Respondent No.3 waiving notice of motion, the Court directed stay of all further proceedings in pursuance of the impugned proceedings dated 01.06.1971 pending final disposal of this appeal. The Court allowed C.M.Ps. 3056 and 3058 of 1973”

3. While the stay order of this Court continued, the Gold Control Act itself was repealed.

This was effected by two sections, namely,:

1. Short title.- This Act may be called the Gold (Control) Repeal Act, 1990.

- A 2. Repeal of Act 45 of 1968.- The Gold (Control) Act, 1968 is hereby repealed.

The statement of objects and reasons for this Act is as follows:

- B “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. Later on, the Gold Control Act, 1968 was enacted with the broad objectives of controlling the production, manufacture, supply, distribution, use and possession of and 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 detection easier by extending the control over gold beyond the stage of import.

- D 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 socio-economic 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 the rigours which this Act imposed upon them.

- F 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 object.”

- G 4. What has been argued by Mr. R. Venkataramani, learned senior counsel appearing on behalf of the appellant, is that considering that the Gold Control Act itself has been repealed without a saving clause, Section 6 of the General Clauses Act would not apply for the reason that the objects and reasons show that the Act was sought to be repealed without any saving clause. He relied strongly upon the objects and reasons using the expression “regressive” and the fact that it has given rise to

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considerable dissatisfaction in the minds of the public as it has caused hardship and harassment to artisans and small self-employed goldsmiths. Therefore, according to him, the statement of objects and reasons clearly evinces a contrary intention as a result of which, nothing will survive the repeal of this Act. This being so, a show cause notice which has been upheld by the Delhi High Court would not survive.

5. On the other hand, Mr. Rupesh Kumar, learned counsel appearing on behalf of the Revenue, has taken us through the impugned judgment and has argued that once there is a repeal simpliciter, without any savings clause, the whole object of such a repeal was so that the general rule under Section 6 would apply, as a result of which the law laid down in State of Punjab vs. Mohar Singh, [1955] 1 SCR 893, would apply.

6. Having heard learned counsel for both sides, we are of the view that the statement of objects and reasons makes it clear that over 22 years, the results achieved under the Act have not been encouraging and the desired objectives for which the Act has been introduced have failed. Following the advice of experts, who have examined issues related to the Act, the objects and reasons goes on further to state that this Act has proved to be a regressive measure which has caused considerable dissatisfaction in the minds of the public and hardship and harassment to artisans and small self-employed goldsmiths.

7. This being the case, we are of the opinion that the repeal simpliciter, in the present case, does not attract the provisions of Section 6 of the General Clauses Act as a contrary intention is very clearly expressed in the statement of objects and reasons to the 1990 repeal Act. In this behalf, it would be apposite to refer to New India Assurance Co. Ltd. vs. C. Padma and Another, (2003) 7 SCC 713 (para 10)

8. This Court noticed that, in a parallel instance of simpliciter repeal, Parliament realized the grave injustice and injury that had been caused to heirs of LRs of victims of accidents if their petitions were rejected only on the ground of limitation. This being the case, this Court found that a different intention had been expressed and, therefore, Section 6-A of the General Clauses Act would not in that situation apply.

9. We find a similar situation in the present case. In point of fact, on going through the impugned judgment, it is clear that every time an

- A amendment was made to the Defence of India Rules and/or repeal of the said rules had taken place, there was always an inbuilt savings clause. In fact, Section 116 of the Gold (Control) Ordinance No.6 of 1968 also made it clear that it went to the extent, in sub-section 2 thereof, by saving show cause notices which, ordinarily, are not saved even if Section 6 were to apply – See M.S. Shivananda vs. Karnataka State Road Transport Corporation and Others, [1980] 1 SCR 684 following Director of Public Works & Anr. vs. Ho Po Sang & Ors., [1961] 2 All. ER 721.
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10. This being the case, we are of the view that the show cause notice dated 01.06.1971, which is the subject matter of this appeal, no longer survives. In this view of the matter, the appeal is disposed of.
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CIVIL APPEAL NO. 10824 OF 2018 (@ SLP (C) No. 26686/2016)

CIVIL APPEAL NO. 10830 OF 2018 (@ SLP (C) No. 29640/2016)

CIVIL APPEAL NO. 10829 OF 2018 (@ SLP (C) No. 29613/2016)

- D **CIVIL APPEAL NO. 10831 OF 2018 (@ SLP (C) No. 29641/2016)**

CIVIL APPEAL NO. 10825 OF 2018 (@ SLP (C) No. 29552/2016)

CIVIL APPEAL NO. 10833 OF 2018 (@ SLP (C) No. 29796/2016)

- E **CIVIL APPEAL NO. 10832 OF 2018 (@ SLP (C) No. 29740/2016)**

CIVIL APPEAL NO. 10826 OF 2018 (@ SLP (C) No. 29559/2016)

CIVIL APPEAL NO. 10827 OF 2018 (@ SLP (C) No. 29601/2016)

CIVIL APPEAL NO. 10828 OF 2018 (@ SLP (C) No. 29602/2016)

- F 11. Leave granted.

12. The impugned order records that owing to counsel not turning up in time, the reference of questions made under the Wealth Tax Act at that point of time would remain unanswered. Given the fact that the show cause notice and proceedings thereafter have now disappeared as a result of the repeal of the Gold Control Act, we give liberty to both parties to add to or amend or delete the questions in the Wealth Tax Reference within a period of eight weeks from today. Once this is done, the writ petitions will taken up and decided on their merits. Considering these writ petitions are of 2005, we request the High Court to hear the same expeditiously.
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13. We, therefore, allow the appeals and set aside the common A
impugned judgment of the High Court.

Devika Gujral

Appeals allowed.