HIGH COURT OF GUJARAT *(D.B.)*

JAYANTILAL AMRUTLAL SHODHAN
V/S
UNION OF INDIA

Date of Decision: 14 March 1968

Citation: 1968 LawSuit(Guj) 29

Hon'ble Judges: P N Bhagwati, A R Bakshi

Eq. Citations: 1970 AIR(Guj) 108, 1970 GLR 208

Case Type: Special Civil Application

Case No: 58 of 1967

Head Note:

Seizure contemplated under R.126(M) - It must be in accordance with R.126(L) (2) - It indicates wides category of persons - Notification to authority officer of central excise department - Notification valid - No excessive delegation. Function of central government - decision whether rules subserve stated purpose or not - Court restricted to substitute its own opinion - gold control Rules not totally unrelated to Act - R.126(L) ,R.126(M),R.126(P) - Not ultra vires of S.3 of defence act. R.126(L)(16) applicable to act or omission after provision coming into force - Before that no act or omission covered by R.126(l)(16). INTERPRETATION OF STATUTES - Intention clear - technical inappropriateness of language. Intention not defeated.

Rule 126M of the Defence of India Rules 1962 does not say any gold seized shall be liable to confiscation but it says gold seized under Rule 126L shall be liable to confiscation and effect must be given to the words seized under Rule 126L. The seizure contemplated by Rule 126M is a seizure under Rule 126L and therefore it must be in accordance with Rule 126L. (Para 5). The words any person are used

in Rule 126L(2) to denote a wider category of persons which would include any and every person who may be authorised by the Central Government but they do not require that such person must be authorised by name and not by description of his office. There is no limitation as to the mode of conferment of authority in Rule 126L(2) and no restriction can be put that the authority must be conferred by name and not by designation of office. (Para 9). Held that by the Notification dated 10th January 1963 as amended by the subsequent Notification dated 5th November 1963 the Central Government authorised the officers of the Central Excise Department not inferior in rank to Sub-inspector of Central Excise to exercise the power under Rule 126L(2) with the written permission of the Superintendent of Central Excise. The person so authorised must be held to be a person duly authorised by the Central Government by writing in that behalf to exercise the power under Rule 126L(2). (Para 11). Rules 126L 126 and 126P of the Defence of India Rules 1962 do not suffer from the vice on excessive delegation of legislative power. (Para 12). Defence of India Act 1962 (LI of 1962)-Sec. 3-Defence of India Rules 1962 Rules 126L 126 Control Rules-Function of Central Government to decide whether rules subserve the stated purpose of rule or not-Court cannot substitute its own opinion-Gold Control Rules cannot be said to be totally unrelated to the Act-Rules 126L 126 not ultra vires sec 3 of the Defence of India Act. While considering the question whether Rules 126L 126 and 126P of the Defence of India Rules sub-serve the purposes for which they are claimed to have been made it must be borne in mind that the Court is not to act as a Court of appeal and examine whether the view taken by the Central Government that the Rules subserve the stated purposes is right or wrong. The Court cannot substitute its own opinion for that of the Central Government; as a matter of fact the Court would not have sufficient means to form an opinion as to whether the Rules subserve the stated purposes or not. Having regard to the nature of the problem to be tackled by the Central Government the diversity of factors liable to be taken into consideration and the possibility of divergence of views in the assessment of the relative value and effect of varying social political and economic factors and their inter-connection with one another a certain amount of latitude and free-play must be allowed to the Central Government and the rules made by the Central Government cannot be struck down unless it appears clearly that the rules cannot on a reasonable view of the matter subserve the stated purposes. Such would be the case where the provisions of the rules are totally unrelated to the stated purposes or they are not reasonably capable of being related to the stated purposes. The test must be whether the means adopted by

the Central Government are reasonably related to the end in view namely the achievement of the stated purposes. In a complex society which is guided by many variable social economic and political factors it would be impossible to predicate in most cases that the means adopted would directly lead to the desired end without the intervention of any intermediate factors. To read the section as authorising the Central Government to make rules only where the direct effect of the Rules is to secure any one or more of the purposes in the section would be to deprive the section of much of its utility and value. (Para 14). Held that the Gold Control Rules cannot be said to be totally unrelated to the purpose of securing the defence of India and maintenance of services and supplies essential to the life of the community nor can it be said that they are not reasonably capable of being related to either of the said two purposes. Rules 126L 126 and 126 are therefore not ultra vires sec. 3 of the Defence of India Act. (Para 16). Defence of India Rules 1962 126 Control Rules-Part XIIA-Rule 126L(16) apply only regarding act or omission after coming into force of the provision-Any act or omission prior to its coming into force not covered by rule 126L(16). Rule 126L(16) of the Defence of India Rules must be construed as attracting penalty only in those cases where the act or omission which would render gold liable to confiscation is done after the coming into force of that provision. If there is any act or omission rendering gold liable to confiscation done by a person prior to the coming into force of Rule 126L(16) such a case would not be covered by Rule 126 and the penalty under that provision would not be attracted. (Para 17). Seizure of gold can be made on suspicion but after seizure gold can be confiscated if what was suspicion at the stage of seizure is converted into determination as a result of adjudication. Gold can therefore be confiscated if it is established that in respect of it any provision of Part XII-A has been contravened. (Para 18). The act or omission, which rendered the undeclared gold liable to confiscation, had already been committed prior to 24th June 1963 and the penalty provided in Rule 126L(16) was not attracted. The offence contemplated by Rule 126L(16) is not a continuing offence. What attracts penalty under Rule 126L(16) is the act or omission which renders gold liable to confiscation. (Para 19). Held that in the instant case the undeclared gold had already become liable to confiscation by reason of an act or omission of the petitioner prior to 24th June 1963 and there was accordingly no question of the petitioner doing any act or omission after the 24th June 1963, which would render the undeclared gold liable to confiscation. (Para 19). INTERPRETATION OF STATUTES-If intention is clear technical inappropriateness of language should

not defeat that intention. If the intention of the Central Government is expressed with sufficient clarity and there is no doubt as to what the Central Government intended to accomplish it would not be right to defeat the intention of the Central Government merely because of technical inappropriateness of the language used by the Central Government. (Para 8). Radha Kishan v. State of Uttar Pradesh Salmon v. Duncombe Sutherland Publishing Co. v. Caxton Publishing Co. Makhan Singh v. The State of Punjab Ram Krishna Dalmia v. S. R. Tendolkar Jyoti Prasad v. Union Territory of Delhi Shri Premchand Jechand v. K. G. Sanghrani Chester v. Bateson Attorney General for Canada v. Hallet & Carey Ltd. Amichand v. G. B. Kotak referred to.

Acts Referred:
Defence Of India Rules, 1962 R 126P, R 126M, R 126L

Final Decision: Petition allowed

Advocates: I M Nanavati,K S Nanavati, P P Khambatta, K H Kaji, K L Talsania

Reference Cases:
Cases Cited in (+): **2**
Cases Referred in (+): **9**

Judgement Text:-

Bhagwati, C J

[1] This petition challenges the validity of certain provisions of the Gold Control Rules, 1963. On 26th October 1962, simultaneously with the Declaration of Emergency under Article 356 of the Constitution, the President promulgated the Defence of India Ordinance, 1962. Pursuant to sec. 3 of the Defence of India Ordinance, the Central Government made the Defence of India Rules, 1962. The Defence of India Ordinance was subsequently repealed by the Defence of India Act, 1962 on 12th December 1962 but by virtue of the saving provision, the Defence of India Rules, were continued in force. The Defence of India Act was passed, as its Preamble shows, to provide for special measures to ensure the public safety and interest, the defence of India and civil defence and for trial of certain offences and for matters connected therewith. Sec. 3, sub-sec. (1) read as follows:

"3. (1) The Central Government may, by notification in the Official Gazette, make such rules as appear to it necessary or expedient for securing the defence of India and civil defence, the public safety, the maintenance of public order or the efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community."

Sec. 3 sub-sec. (1) provided that without prejudice to the generality of the powers conferred by sub-sec. (1), the rules may provide for and may empower any authority to make orders providing for all or any of the matters enumerated in clauses (1) to (57). One of the matters enumerated was that set out in clause (33), namely :

"(33) controlling the possession, use or disposal of, or dealing in, coin, bullion, bank notes, currency notes, securities or foreign exchange; ".

On 9th January 1963, the Central Government, in exercise of the powers conferred under sec. 3 of the Defence of India Act, amended the Defence of India Rules by introducing Part XII-A comprising Rules 126A to 126Z, (hereinafter referred to as the Gold Control Rules, 1963). Rule 126A, clause (a), defined "Board" to mean the Board constituted under rule 126J and Rule 126J, clauses (1) and (2) laid down the constitution and functions of the Board. Clause (4) of Rule 126 J conferred power on the Board to authorise by general or special order "any person to exercise all or any of the powers exercisable by it under this Part other than the power to hear appeals under Rule 126M and this present power of authorisation" and different persons could be authorised by the Board to exercise different powers. Rule 1261 clause (1) required every person (not being a dealer or refiner required to apply for a licence, or licensed under Part XIIA) to make a declaration to the Board in the prescribed form as to the quantity, description and other prescribed particulars of gold, other than ornaments, owned by him, within thirty days from the commencement of Part XIIA. Part XIIA came into force on 9th January 1963 and therefore the period of thirty days limited by Rule 1261 clause (1) for making a declaration under that rule was due to expire on 8th February 1963 but the Central Government extended the period up to

28th February 1963. The petitioner was admittedly not a dealer or refiner required to apply for a licence or licensed under Part XIIA and he was therefore required under Rule 1261 clause (1) to make a declaration to the Board in the prescribed form as to the quantity, description and other prescribed particulars of gold owned by him. He accordingly made such declaration on 7th February 1963 and in that declaration he showed that he owned only six gold bars and twenty-five gold sovereigns.

[2] Now according to the respondents the petitioner also owned further eight gold bars weighing 23, 229 Gms. and one hundred fifty gold sovereigns weighing 1, 223 Gms. which were not declared by him and he remained in possession of this quantity of gold (hereinafter referred to as the undeclared gold). This undeclared gold was secreted by the petitioner beneath the earth two and a half feet deep at four points in the strong room of his celler. It appears that sometime prior to 18th November 1964, the tax authorities received information that some gold was lying secreted in the residential premises of the petitioner and, therefore, on 18th November 1964, some senior officers of the Income-tax Department raided the residential premises of the petitioner and carried on search of the residential premises. On 20th November while the search was in progress, the petitioner, realising that the officers conducting the search were on the point of discovering the undeclared gold which was lying secreted in the strong room of the celler, came out with the story that his late mother had secreted some valuables in the strong room of the celler, at certain points and offered to point out the spots where according to him the valuables were secreted. When earth was dug out at those spots upto a depth of two and a half feet, cement containers were found embedded in the earth and in the cement containers was the undeclared gold of the estimated value of Rs. 2, 83, 320/-. The undeclared gold was deposited in a locker in the Safe Deposit Vault of the Bank of India Ltd., in the joint names of the petitioner and one of the Income-tax Officers. Thereafter on 17th December 1964, one R. M. Shelat, Deputy Superintendent of Central Excise, went to the residence of the petitioner with two Panchas and in the presence of the Panchas he seized the undeclared gold under Rule 126L clause (2). The petitioner thereafter made frantic efforts to purchase Gold Bonds against the undeclared gold as also to subscribe for the National Defence Gold Bonds, 1980 by utilising the undeclared gold but his efforts were unsuccessful since the authorities refused to make the undeclared gold available for either of these two purposes. In the meantime, a notice dated 5th June 1965 was issued by the Assistant Collector of Central Excise, Baroda, calling upon the petitioner to show cause why the

undeclared gold which was seized as aforesaid and in respect of which an offence as mentioned in para 1 of the notice appeared to have been committed, should not be confiscated under Rule 126M and penalty should not be imposed under Rule 126L clause (16). The petitioner filed a statement in reply to the show cause notice on 28th June 1965. The Collector of Central Excise did not proceed with the hearing for some time but ultimately, by a letter dated 6th January 1967, he fixed the date of hearing on 20th January 1967 and intimated to the petitioner that he may remain present for the purpose of hearing at the appointed time on that date. The petitioner thereupon filed the present petition challenging the validity of the show cause notice dated 5th June 1965.

[3] Before we set out the grounds of challenge, it would be convenient at this stage to refer to some of the relevant provisions of the Gold Control Rules. We have already referred to Rule 126J and Rule 126 I clause (1). Rule 126 I clause (10) is also material and it runs as under :-

> "126 I
>
> (10) No person other than a dealer and a refiner, licensed under this Part, shall acquire or have in his possession or under his control any quantity of gold required to be declared under this rule unless such gold has been included in a declaration or further declaration made thereunder;
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> Rule 126L is the next important rule and it provides, omitting portions immaterial: - "126L. (2) Any person authorised by the Central Government by writing in this behalf may-
>
> (a) enter and search any premises, not being a refinery or establishment re ferred to in sub-rule (1), vaults, lockers or any other place whether above or below ground;
>
> (b) seize any gold in respect of which he suspects that any provision of this Part has been, or is being, or is about to be, contravened, along with the package, covening or receptacle, if any, in which such gold is found and thereafter take all measures necessary for their safe custody.

(16) Any person who in relation to any gold does or omits to do any act which act or omission would render such gold liable to confiscation under rule 126M, or abets the doing or omission of such an act shall be liable, in addition to any liability for any punishment under this Part to a penalty not exceeding five times, the value of the gold or one thousand rupees, whichever is more;.. "

It may be pointed out that clause (16) was not originally part of Rule 126L but it was introduced by an amendment made by the Defence of India (Seventh Amendment) Rules, 1963 which came into force from 24th June 1963. Another amendment made by the Defence of India (Seventh Amendment) Rules, 1963 was that the reference to the Board was deleted and instead, a provision was made for appointment of an Administrator who was to discharge substantially the same functions as the Board. Rule 126M provided for confiscation of gold seized under Rule 126L :-

"126M. (1) Any gold seized under rule 126L together with the package, covering or receptacle, if any, in which such gold is found shall be liable to confiscation.

(2) Such confiscation may be adjudged,..

(3) An appeal shall lie to the Board against every adjudication of confiscation under sub-rule (2)."

Rule 126X which is the last Rule requiring to be noticed reads as under: -

126X.-Until the Board is constituted in accordance with the provisions of this Part and holds its first meeting, all or any of the functions of the Board may be performed by the Central Government. "

The Board was constituted in accordance with the provisions of Part XII-A but it did not hold its first meeting and, therefore, at the material time, the

Central Government was entitled to perform the functions of the Board under Rule 126X. Having noticed the relevant provisions of the Gold Control Rules, let us now examine the grounds on which the validity of the impugned show cause notice was challenged on behalf of the petitioner.

[4] There were four grounds on which the petitioner challenged the validity of the impugned show cause notice and they were :-

(A) R. M. Shelat who seized the undeclared gold was not duly authorised by the Central Government under Rule 126L clause 2 and, therefore the seizure of the undeclared gold was not a valid seizure under Rule 126L and it was not liable to be confiscated under Rule 126M.

(B) Rules 126L, 126M and 126P suffered from the vice of excessive delega tion of legislative power and were therefore null and void.

(C) Rules 126L, 126M and 126P were ultra vires sec. 3 of the Defence of India Act inasmuch as they were not made for carrying out one or more of the purposes set out in sec. 3, sub-sec. (1).

(D) Rule 126L clause (16) under which penalty was sought to be imposed on the petitioner was not applicable in the present case since, on the facts alleged in the show cause notice, the omission to declare the undeclared gold within the prescribed period and remaining in posses sion of it had already rendered the undeclared gold liable to confisca tion prior to the introduction of Rule 126L clause (16) and Rule 126L clause (16) could not be applied retrospectively so as to take in cases where some act or omission rendering gold liable to confiscation was done by a person prior to the coming into force of that clause.

We shall proceed to consider these grounds in the order in which they were pressed before us.

[5] Re: Ground (A): This ground is based on the premise that unless gold is validly

seized under Rule 126L, it cannot be confiscated under Rule 126M. It is, therefore, necessary to determine what, on a true construction of Rule 126M, is the condition for confiscation under that Rule. Is it necessary that gold must be validly seized under Rule 126L before it can be confiscated under Rule 126M ? Rule 126M says that any gold seized under Rule 126L shall be liable to confiscation. It is not any gold which is declared to be liable to confiscation: it is only gold seized under Rule 126L which is subjected to the liability to confiscation. Seizure of gold must, therefore, clearly precede its confiscation. Having regard to the clear and explicit language of the rule, Mr. Khambhatta on behalf of the respondents could not resist the conclusion that unless gold is seized it cannot be confiscated but his argument was that though seizure may be a necessary condition of liability to confiscation, it was not necessary that the seizure must be a valid seizure under Rule 126L. What is required to satisfy the condition of that rule is, he argued, the physical act of seizure and whether it is done in accordance with Rule 126L or otherwise is entirely immaterial for that relates only to the mechanics of seizure. He contended that it was therefore entirely irrelevant to consider whether or not the undeclared gold was validly seized under Rule 126L. This contention is, in our opinion, not well-founded for it ignores the key words "any gold seized under Rule 126L. " Rule 126M does not say "any gold seized" shall be liable to confiscation but it says "gold seized under Rule 126L" shall be liable to confiscation and effect must be given to the word "seized under Rule 126L". The seizure contemplated by Rule 126M is a seizure under Rule 126 Land, therefore, it must be in accordance with Rule 126L. Moreover the suggested construction would make a mockery of the safeguard provided by Rule 126L in regard to search and seizure of gold. Mr. Khambhatta on behalf of the respondents relied on the decision of the Supreme Court in Radha Kishan v. State of Uttar Pradesh, A. I. R. 1963 S. C. 822 but that decision deals with a totally different question and cannot help in the construction of Rule 126M. The point at issue in that case was whether seizure of certain articles as a result of search carried on in contravention of the provisions of Secs. 103 and 165 of the Code of Criminal Procedure was vitiated so that the fact of seizure could not be proved by the evidence regarding seizure. The Supreme Court held that it was undoubtedly true that because of the illegality of the search the Court might be inclined to examine carefully the evidence regarding seizure but the seizure was not vitiated and if the evidence with regard to the fact of seizure was otherwise satisfactory, the seizure could be established. We are not concerned here with any question of proving the fact of seizure. The question before us is as to what is the true interpretation of the words "any gold seized under Rule 126L" and these words clearly posit gold seized in accordance with Rule 126L.

[6] It therefore becomes necessary to consider whether the undeclared gold which was seized by R. M. Shelat was validly seized under Rule 126L. Rule 126L(2) says that any person authorised by the Central Government by writing in this behalf may enter and search any premises and seize any gold in respect of which he suspects that any provision of Part XII-A has been or is being or is about to be contravened. The contention of the petitioner was that R. M. Shelat was not authorised by the Central Government by writing to enter and search the premises of the petitioner and seize the undeclared gold. The respondents, however, urged that R. M. Shelat had the necessary authority from the Central Government by reason of the Notification dated 10th January 1963 issued by the Central Government as amended by the subsequent Notification dated 5th November 1963 read with the permission dated 17th December 1964 given by the Superintendent of Central Excise. Since the Notification of the Central Government dated 10th Janauary 1963 as amended by the subsequent Notification dated 5th November 1963 was relied upon as the source of authority of R. M. Shelat to exercise the function under Rule 126L(2), it would be desirable to examine the terms of the said Notification. Considerable argument turned upon the language of the said Notification and we would, therefore, reproduce it in full in so far as it is material for the present purpose:

> "S. O. 130: In exercise of the powers conferred by Rule 126X read with sub-rule (4) of rule 126J of the Defence of India Rules, 1962, the Central Government hereby authorises officers of the Central Excise Department not inferior in rank to officers specified in column 2 of the table below as the persons who shall exercise any or all the powers of the Gold Board in relation-to the matters specified in the corresponding entries in column 3 and column 4 of the said table.
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> TABLE

Sr. No. Officers of the Central Excise Department authorised to exercise the powers and functions Rule of the Defence of India Rules, 1962 to which the powers and functions, have reference. Nature of the powers and functions. 1 2 3 4 1. Superintendent 126E Issue, renewal, refusal or cancellation of li cences of the dealers and acceptance and disposal of gold deposited by persons whose applications for licences have been refused or whose licences have been cancelled. 2. Superintendent 126F Acceptance and authentication of re turns, affixing of signatures thereon and return of authenticated and signed cop ies of returns to licensed dealers and re finers. Calling for and inspection of ac counts, registers and documents from li censed dealers and refiners. 3. Inspector 126G 4. Inspector 1261 Acceptance and authentication of declara tions by persons other than licensed deal ers or refiners and affixing of signatures on

declarations and return of authenti cated copies to the declarants. 5. Sub-Inspector 126L(1) Entry into and search of any establishment of any licensed dealer or refiner and sei zure of gold or packages, coverings and receptacles containing gold, in the event of suspected contravention of the rules. 6. Sub-Inspector With 126L(2) Entry into and search of premises not be the written permission of Superintendent ing refinery or establishment of a licensed dealer and seizure of any gold or packages, coverings or receptacles containing gold which may be found therein. 7. Inspector 126L(6) 8. Superintendent 126L(4) Power to take and dispose of samples. Power to hold enquiry for the purpose of ascer taining whether there has been any contravention of the provisions of Part XIIA of the Defence of India Rules, 1962 and to summon persons and documents. 9. Collector of Central Excise Assistant Collec of Central Excist 126M &(2) tor (1) Confiscation of gold found and seized under rule 126L(1) or rule 126L(2); (a) where the value exceeds two thou sand rupees; (b) where the value does not exceed two thousand rupees. 10. Assistant Collector of Central Excise 126Q According of sanction for the prosecution of offences. 7(26)/67-SB) Dt. 9-1-1963. "

Dept. of E. A. Notm. (No. F. 7(26)/67-SB) Dt 9-1-1963 "

This Notification was amended by the subsequent notification dated 5th November 1963 which was inter alia in the following terms :

"NOTIFICATION.

Whereas the Central Government is of the opinion that it is necessary in the public interest to do so:

Now, therefore, in exercise of the powers conferred by sub-rule (4) of Rule 126J read with Rule 126X, of the Defence of India Rules, 1962 the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance, Department of Economic Affairs No. S. O. 130, dated the 10th January 1963, namely: -

In the said notification: -

(1) ...

(2) for the Table, the following Table shall be substituted, namely: -

TABLE

Sr No. Officers authorised to exercise the powers and functions. Rule of the Defence of India Rules 1962 to Which the powers and Functions have reference Nature of the powers and functions. 1. 2. 3. 4. 5.

6. Sub-Inspector of the Central Excise Department with the written permission of Super intendent Preventive Officer of the Customs Department for the time being employed for the prevention of smug gling, with the written per mission of a Gazetted Officer of the Collectorate of Customs any officer of the Directorate of Revenue Intelligence, other than (i) the Administrative Officer, (ii) Hindi Officer and (iii) Ministerial Officer, with the written permission of a Gazetted Officer of the Directirate of Revenue Intelligence. Entry into and search of premises-not being re finery or establishment of a licensed dealer and seizure of any gold or packages, coverings or receptacles containing gold which may be found therein.

On 17th December 1964, the Superintend of Central Excise granted written permission to R. M. Shelat and other Inspectors and Sub-Inspectors of Central Excise to enter into and to search the premises of the petitioner and to seize any gold in respect of which any provision of the Gold Control Rules, 1963 had been or was being or was about to be contravened. The question is whether by reason of the Notification dated 10th January 1963 as amended by the subsequent Notification dated 5th November 1963 read with the permission dated 17th December 1964 R. M. Shelat was validly authorised by the Central Government under Rule 126L(2).

[7] The first contention of the petitioner on this point was that the recital as to the source of power contained in the Notifications dated 10th January 1963 and 5th November 1963 as also the words "any or all the powers of the Gold Board" used in the opening part of the Notification dated 10th January 1963 showed that the powers which the officers speci fied in column 2 of the Table were authorised by the Central Government to exercise were the powers of the Gold Board in relation to the matters specified in the corresponding entries in columns 3 and 4 of the Table and since the power contemplated in Rule 126L(2) was not a power of the Gold Board, the Notification dated 10th January 1963 as amended by the subsequent Notification dated 5th November

1963 was ineffective to authorise any officer to exercise the power under Rule 126L(2). Now it is no doubt true that in the opening part of the Notifications dated 10th January 1963 and 5th November 1963 it is said that the authorisation is granted by the Central Government in exercise of the powers conferred by Rule 126J(4) read with Rule 126X which permit authorisation only in respect of the powers of the Gold Board but that is not determinative of the question, for if the Central Government had the power to authorise exercise of power under Rule 126L(2) under any other provision of law, the authority granted under the Notifications dated 10th January 1963 and 5th November 1963 could be justified under that power in spite of reference to the wrong power in the opening part of the said Notifications. It is well-settled that a wrong reference to the power under which certain action is taken by the Central Government would not per se vitiate the action taken if it can be justified under some other power under which the Central Government could lawfully take such action. The wrong lable given by the Central Government cannot affect the validity of the action if it is otherwise within the scope of the power of the Central Government. The recital as to the source of the power contained in the opening part of the Notifications dated 10th January 1963 and 5th November 1963 cannot, therefore, be of any help in determining the true meaning and effect of the Notification dated 10th January 1963 as amended by the subsequent Notification dated 5th November 1963.

[8] Turning to the words "the powers of the Gold Board" it is true that, standing by themselves, they Secm to support the argument of the petitioner but if we read the Notification dated 10th January 1963 as a whole and try to collect the intention of the Central Government from every part of it, these words do not present any difficulty in the way of a proper construction of the Notification. The intention of the Central Government as manifested in the Notification is clear beyond question. The Notification says in so many terms that the Central Government authorises the specified officers to exercise any or all the "powers of the Gold Board in relation to the matter specified in the corresponding entries in column 3 and column 4 of the said Table" and one of the matters specified in the Table is the power of entry into and search of premises not being refinery or establishment of a licensed dealer and seizure of any gold which may be found therein under Rule 126L(2). It is clear from he Notification that the Central Government intended to authorise the specified officers to exercise the power of entry into and search of premises not being refinery or establishment of a licensed dealer and seizure of gold found therein under Rule 126L(2) and that is why it included Item No. (6) in the Table of the Notification. The question is whether the words "the powers of the Gold Board" in the opening part of the Notification should be allowed to defeat the

manifest intent of the Central Government. These words undoubtedly can have no application in a case of exercise of power under Rule 126L(2), for the power under Rule 126L(2) is not a power of the Gold Board. But it must be remembered that the Central Government was providing for conferment of authority in respect of several matters and some matters such as Rules 126E, 126F, 126G, 1261 and 126L(6) did refer to the powers of the Gold Board. It is, therefore, quite possible that the Central Government may have used the words "the powers of the Gold Board" though they were inappropriate in relation to the remaining matters, namely, Rules 126L(1), 126L(2), 126L(4) and 126M(2). Mere technical inappropriateness of language should not be allowed to defeat the intention of the Central Government. Lord Hobhouse speaking on behalf of the Judicial Committee of the Privy Council in Salmon v. Duncombe, (1886) XL A. C. 627 observed: "It is, however, a very serious matter to hold that when the main object of a statute is clear, it shall be reduced to a nullity by the draftman's unskilfulness or ignorance of law". The same principle was reiterated by Lord Justice Mackinnon in Sutherland Publishing Co. v. Caxton Publishing Co. (1937) Ch. 210, when he said:

> "When the purpose of an enactment is clear, it is often legitimate, because it is necessary, to put a strained interpretation upon some words which have been inadvertently used, and of which the plain meaning would defeat the obvious intention of the Legislature."

If the intention of the Central Government is expressed with sufficient clarity and there is no doubt here as to what the Central Government intended to accomplish, it would not be right on our part to defeat the intention of the Central Government merely because of technical inappropriateness of the language used by the Central Government. Moreover to read the words "the powers of the Gold Board" as overriding the other parts of the Notification would be to sin against the fundamental rule of construction which requires that all parts of a statutory instrument must be read harmoniously so as to give effect to each and every part and not to result in rejection of any part as ineffective or futile. The effect of the suggested construction would be to render entries at serial Nos. (5), (6), (8) and (10) ineffective and meaningless and to mutilate the Notification by excising an important part of it. That would be contrary to all recognized canons of construction and would fail to achieve the intention of the Central Government. We are, therefore, of the view that on a plain natural construction of the words used in the Notification

as amended, the Central Government authorised the officers of the Central Excise Department not inferior in rank to the Sub-Inspector of Central Excise with the written permission of the Superintendent of Central Excise to exercise the power under Rule 126L(2).

[9] It was then contended on behalf of the petitioner that in any event, the authority conferred under the Notification was ineffective for the purpose of Rule 126L(2) since the authority was conferred on the specified officers by designation of office held by them and not by name. The petitioner urged that the words used by the rule-making authority in Rule 126L(2) were "any person" and these words indicated that a person to be entitled to exercise the power under Rule 126L(2) must be authorised by name and not by description of office held by him. This argument is plainly incorrect: it Secks to read much more in Rule 126L(2) than what it contains. The words "any person" are used in Rule 126L(2) to denote a wider category of persons which would include any and every person who may be authorised by the Central Government but they do not require that such person must be authorised by name and not by description of his office. There is no limitation as to the mode of conferment of authority in Rule 126L(2) and we cannot import any restriction that the authority must be conferred by name and not by designation of office. Though the General Clauses Act, 1897 is not strictly applicable in the construction of the Gold Control Rules, the principle embodied in sec. 15 of that Act can certainly be relied upon and it would be legitimate to hold that where a power to appoint any person to execute any function is conferred, such appointment may be made either by name or by virtue of office.

[10] The next contention of the petitioner was that in any event the authorisation conferred under the Notification was not a valid authorisation in so far as the officers not inferior in rank to the Sub-Inspector of Central Excise were concerned, since there was no direct authorisation in their favour but they were authorised to exercise the power under Rule 126L(2) with the written permission of the Superintendent of Central Excise. The petitioner contended that the authorisation of the Central Government under Rule 126L(2) must be directly in favour of the person concerned and it cannot be made conditional upon a permission to be granted by another officer of the Government. It is difficult to appreciate this argument. Rule 126L(2) confers power on the Central Government to authorise any person which would include an officer of the Government and it is implicit in the conferment of the power that the Central Government may, while authorising such officer, impose a condition that he shall exercise the power under Rule

126L(2) after obtaining the written permission of his superior. If such a condition is imposed on the exercise of the power, the person exercising the power would have to obtain the written permission of his superior as required by the condition before he can exercise the power but when he exercises the power he would do so by virtue of the authority conferred upon, him by the Central Government. The authorisation may be unconditional or it may be subject to the fulfillment of a condition.

[11] It is, therefore, clear that by the Notification dated 10th January 1963 as amended by the subsequent Notification dated 5th November 1963 the Central Government authorised the officers of the Central Excise Department not inferior in rank to Sub Inspector of Central Excise to exercise the power under Rule 126L(2) with the written permission of the Superintendent of Central Excise. R. M. Shelat was a Deputy Superintendent of Central Excise and was as such an officer of the Central Excise Department superior in rank to the Sub-Inspector of Central Excise and before effecting search and seizure, he obtained the permission dated 17th December 1964 from the Superintendent of Central Excise. He must, therefore, be held to be a person duly authorised by the Central Government by writing in that behalf to exercise the power under Rule 126L(2) and ground (A) must be held to be unsustainable and must be rejected.

[12] Re: Ground (B): The challenge under this ground was that Rules 126L, 126M and 126P suffered from the vice of excessive delegation of legislative power and were therefore invalid. But this challenge stands negatived by the decision of the Supreme Court in Makhan Singh v. The State of Punjab, A. I. R. 1964 S. C. 381. The petitioner in that case challenged the validity of Rule 30(1)(b) which was made by the Central Government under sec. 3, sub-sec. (1) and sub-sec. (2) clause 15(i) of the Defence of India Act and the contention was that in conferring power on the Central Government to make rules, the Legislature had abdicated its essential legislative function in favour of the Central Government and therefore rule 39(1)(b) was invalid. Gajendragadkar J. speaking on behalf of the Supreme Court repelled this contention observing:

> "In the present cases, one has merely to read sec. 3(1) and the detailed provisions contained in the several clauses of sec. 3(2) to be satisfied that the attack against the validity of the said section on the ground of excessive delegation is patently unsustainable. Not only is the legislative policy broadly indicated in the preamble to the Act, but the relevant provisions of the impugned section itself give such detailed and specific guidance to the rule

making authority that it would be idle to contend that the Act has delegated essentially legislative function to the rule-making authority. In our opinion, therefore, the contention that sec. 3(2)(15)(i) of the Act suffers from the vice of excessive delegation must be rejected.....If the impugned sections of the Act are valid, it follows that rule 30(1)(b) must be held to be valid since it is consistent with the operative provisions of the Act and in making it, the Central Government has acted within its delegated authority."

This ground also, therefore, fails and must be rejected.

[13] Re: Ground (C): This ground raises the question whether Rules 126L, 126M and 126P are outside the ambit of the power conferred under sec. 3. The contention of the petitioner was that rules could be made under sec. 3 only for the purpose of carrying out one or more of the purposes set out in sec. 3, sub-sec. (1) and since Rules 126L, 126M and 126P did not subserve any one or more of the purposes set out in sec. 3, sub-sec. (1), they were ultra vires sec. 3. Now for the purpose of deciding this contention, it is immaterial whether the Gold Control Rules were made under sec. 3 sub-sec. (1) or sec. 3 sub-sec. (2) clause (33). Some argument was addressed before us on behalf of the petitioner as to whether all that was comprised within the definition of "Gold" in Rule 126A Explanation clause (d) could be said to be "Bullion" within the meaning of that term as used in sec. 3, sub-sec. (2) clause (33) but it is not necessary to examine this question, for even if the view be taken that the word "Bullion" is not sufficiently wide to comprehend within its scope and ambit of all that is included in the definition of "Gold" in Rule 126A Explanation clause (d) and Gold Control Rules cannot be justified under sec. 5 sub-sec. (2) clause (33), they can in any event trace the source of their authority in sec. 3 sub-sec. (1). Section 3 sub-sec. (1) confers rule-making power on the Central Government which can be exercised for carrying out any one or more of the purposes set out in that sub-section and sub-sec. (2) of sec. 3 then proceeds to set out illustratively certain matters for which the rules made under sec. 3 sub-sec. (1) may provide. The matters set out in sec. 3 sub-sec. (2) are not restrictive of the generality of the rule making power conferred under sec. 3 sub-sec. (1): the function of sec. 3, sub-sec. (2) is merely an illustrative one. It is, therefore, unnecessary to inquire whether the Gold Control Rules, "were made under sec. 3 sub-sec. (1) or sec. 3 sub-sec. (2) clause (33). But in either case, they could be validly made only for securing one or more of the purposes mentioned in sec. 3 sub-sec. (1). There must be a relation between the provisions of the Rules and one or more of the purposes specified in sec. 3 sub-sec. (1).

The test provided by the guiding principle set out in sec. 3 sub-sec. (1) is an objective test and whether or not in making the Rules the guiding principle was followed by the Central Government and the Rules subserve any of the purposes set out in sec. 3 sub-sec. (1) is a justiciable question. Vide clause (v) of classification of statutes made in Ram Krishna Dalmia v. S. R. Tendolker, A. I. R. 1958 S. C. 1548, the observations of the Supreme Court in Jyoti Prasad v. Union Territory of Delhi, A. I. R. 1961 S. C. 1602 and the unreported decision of this Court in Shri Premchand Jechand v. K. C. Sanghrani, Special Civil Application No. 434 of 1967. If it can be shown from the intrinsic evidence in the Rules or from the affidavits that the Rules do not subserve any of the purposes set out in sec. 3 sub-sec. (1), the Rules would be outside the ambit of sec. 3.

[14] Now the case of the respondents was that the Gold Control Rules subserved the purpose of securing the defence of India and maintaining supplies and services essential to the life of the community and the argument of the petitioner was, therefore, directed towards showing that the Rules did not subserve either of the said two purposes. The petitioner urged that for the purpose of establishing that the Rules subserved the purpose of securing the defence of India and maintenance of supplies and services essential to the life of the community, it was not enough to show that there was some connection between the provisions of the Rules and the said two purposes but it was necessary to show that such connection was real and proximate so that the provisions of the Rules, if implemented, would result in the securing of the said two purposes. The argument of the petitioner was that if this was the test to be applied for the purpose of determining whether the Rules subserved the said two purposes, it was apparent that the Rules did not subserve either of the said two purposes for there was no real and proximate connected between the provisions of the Rules and the said two purposes and the provisions of the Rules, if implemented, did not directly and immediately result in the fulfilment of the said two purposes. Before we proceed to consider this argument of the petitioner, it is necessary to point out that while considering the question whether the Rules subserve the purposes for which they are claimed to have been made, it must be borne in mind that the Court is not to act as a Court of appeal and examine whether the view taken by the Central Government that the Rules subserve the stated purposes is right or wrong. The Court cannot substitute its own opinion for that of the Central Government; as a matter of fact, the Court would not have sufficient means to form an opinion as to whether the Rules subserve the stated purposes or not. Having regard to the nature of the problem to be tackled by the Central Government, the diversity of factors liable to be taken into consideration and the

possibility of divergence of views in the assessment of the relative value and effect of varying social, political and economic factors and their inter connection with one another, a certain amount of latitude and free-play must be allowed to the Central Government and the rules made by the Central Government cannot be struck down unless it appears clearly that the rules cannot, on a reasonable view of the matter, subserve the stated purposes. Such would be the case where the provisions of the rules are totally unrelated to the stated purposes or they are not reasonably capable of being related to the stated purposes. The test must be whether the means adopted by the Central Government are reasonably related to the end in view, namely, the achievement of the stated purposes. We cannot accept the contention of the petitioner that the connection between the means and the end must be such that the implementation of the means must directly result in the achievement of the end without any intervening steps in the chain of causation. In a complex society which is guided by many variable social, economic and political factors, it would be impossible to predicate in most cases that the means adopted would directly lead to the desired end without the intervention of any intermediate factors. To read the section as authorising the Central Government to make rules only where the direct effect of the rules is to secure any one or more of the purposes set out in the section would be to deprive the section of much of its utility and value. It is immaterial as to how many links are there in the chain between the provisions of the rules and the stated purposes for effectuating which the rules are made. There can be no hard and fast rule or straight-jacket formula in this respect. The question must always be, whether the provisions of the rules can, on a reasonable view of the matter, be said to be related to the stated purpose and if they are, they must be held to be within the scope and ambit of sec. 3.

[15] This view which we are taking finds support from the decision of the English Court in Chester v. Bateson, (1920) 1 K. B. 829. There the question was whether a certain Regulation was ultra vires the regulation making power conferred on His Majesty in Council by sec. 1, sub-sec. (1) of the Defence of Realm Consolidation Act, 1914 and dealing with this question, Darling J. stated the following test :

> "...and I ask myself whether it is a necessary, or even reasonable, way to aid in securing the public safety and the defence of the realm to give power to a Minister to forbid any person to institute any proceedings to recover possession of a house so long as a war worker is living in it."

The same test was also applied by the Judicial Committee of the Privy

Council in Attorney General for Canada v. Hallet & Carey Ltd., 1952 A. C. 427. That was an appeal from Canada and the statute which came up for consideration was the National Emergency Transitional Powers Act, 1945. Sec. 2, sub-sec. (1) conferred power on the Governor-in-Council to do and authorise such acts and things and make from time to time such orders and regulations as he may deem necessary or advisable for the purpose of maintaining, controlling and regulating supplies and services, prices, transportation, use and occupation of property, rentals, employment, salaries and wages to ensure economic stability and an orderly transition to conditions of peace. In exercise of this power, an Order in Council was made by the Governor in Council and the question was whether this Order in Council was ultra vires sec. 2(1) of the Act. Explaining the scope and ambit of the power of the Governor in Council under sec. 2(1), the Judicial Committee of the Privy Council said:

" That does not allow him (Governor in Council) to do whatever he might feel inclined, for what he does must be capable of being related to one of the prescribed purposes, and the Court is entitled to read the Act in this way. " The Bombay High Court has also adopted the same test in Amichand v. G. B. Kotak, 67 B. L. R. 234.

[16] If this test is applied, the challenge to the validity of Rules 126L, 126M and 126P on this ground must fail. The Gold Control Rules are reasonably related to the purpose of securing the defence of India and maintenance of supplies and services essential to the life of the community. We may in this connection refer to paragraph 6 of the affidavit of Chunilal Gopichand Soni sworn on 1st April 1967 where it is stated :

" I say that the said Rules have been framed by the Central Government in exercise of its powers conferred by the sec. 3 sub-sec. (i) of the Defence of India Act, 1962 and not merely under sec. 3, sub-sec. (ii) clause 33, as suggested. I say that the Rules were framed inter alia with a view to put restrictions on the smuggling of gold and on the use of gold already smuggled into India. I say that smuggling of gold was causing a drain on the foreign exchange and that preventing smuggling of gold would result in increasing foreign exchange reserve of the Central Government which was very necessary for the purposes of the Defence of India as well as the

maintenance of the supplies and civil services essential to the life of the community. I say that the gold control rules are inter alia intended to serve the purpose of conservation of foreign exchange as also for the other purposes mentioned in sec. 3(i) of the said Act. In this connection, it is common knowledge that the prices of gold in India owing to the demand by the people for preparing ornaments and articles of gold has been very high and lucrative as compared to the price of gold in other countries and that is the inducement and incentive to the people to smuggle gold. The smuggling of gold adversely affects to a great extent India's foreign exchange reserve and therefore it was necessary to control internal market and business in gold for purposes of conservation of foreign exchange by restricting the use of such gold which is very essential in times of emergency for the Defence of India as well as for maintenance of essential services and supply of essential commodities. I say that it was for these reasons and to achieve these objects that the Gold Control Rules were promulgated."

In view of the statements in this paragraph, it is impossible to say that the Gold Control Rules are totally unrelated to the purpose of securing the defence of India and maintenance of services and supplies essential to the life of the community or that they are not reasonably capable of being related to either of the said two purposes. We must, therefore, reject this ground of challenge against the validity of the impugned Rules.

[17] Re: Ground (D): That takes us to the last ground of chal lenge against the validity of the impugned show cause notice. This ground of challenge was a limited one and it was directed only against the penalty sought to be imposed on the petitioner under Rule 126L(16). The argument of the petitioner was that the omission to declare the undeclared gold and retaining possession of it without declaring it which rendered it liable to confiscation had already taken place prior to 24th June 1963-when Rule 126L(16) was introduced in Part XII-A of the Gold Control Rules and Rule 126L(16) was, therefore, not applicable and no penalty could be imposed on the petitioner under that Rule. This argument depends for its determination on a true interpretation of Rule 126L(16) and it is, therefore, necessary to examine the language of that provision. Rule 126L(16) says that any person who in relation to any gold does or omits to do any act which act or omission would render such gold liable to confiscation under Rule 126M, or abets the doing or omission of such an act shall be liable, in addition to any liability for

any punishment under Part XII-A to a penalty not exceeding five times the value of the gold or one thousand rupees, whichever is more. It is a provision imposing penalty and therefore it should not be construed retrospectively so as to impose penalty for an act committed prior to its coming into force unless such effect cannot be avoided without doing violence to its language. Now, there is nothing in the language of this provision which compels us to give it a retrospective operation. On the contrary, the language clearly suggests a prospective operation. Rule 126L(16) must, therefore, be construed as attracting penalty only in those cases where the act or omission which would render gold liable to confiscation is done after the coming into force of that provision. If there is any act or omission rendering gold liable to confiscation done by a person prior to the coming into force of Rule 126L(16), such a case would not be covered by Rule 126L(16) and the penalty under that provision would not be attracted. It, therefore, becomes necessary to inquire whether on the allegations contained in the show cause notice, any act or omission was done by the petitioner after the coming into force of Rule 126L(16) which entered the undeclared gold liable to confiscation. It is only if the respondents can show that such act or omission was done by the petitioner that the respondents can assume jurisdiction to impose penalty on the petitioner under Rule 126L(16).

[18] That raises the question as to when gold becomes liable to confiscation. Rule 126M deals with confiscation of gold and says that any gold seized under Rule 126L shall be liable to confiscation. Though the liability to confiscation is declared by Rule 126M, it does not in so many terms state the grounds on which gold which is seized under Rule 126L shall be liable to confiscation. But the grounds can be clearly gathered by implication from reference to Rule 126L. The scheme of the rules Secms to be that any person authorised by the Central Government may seize gold if he suspects that in respect of it any provision of Part XII-A has been or is being or is about to be contravened and after gold is seized, it may be confiscated after adjudication in the manner provided by law if it is adjudged that any provision of Part XIIA has been contravened in respect of such gold. Seizure of gold can be made on suspicion but after seizure, gold can be confiscated if what was suspicion at the stage of seizure is converted into determination as a result of adjudication. Gold can, therefore, be confiscated if it is established that in respect of it any provision of Part XIIA has been contravened. Contravention of any provision of Part XIIA in relation to any gold would render such gold liable to confiscation. The question which we must, therefore, ask ourselves is, whether any contravention of a provision of Part XIIA rendering the undeclared gold liable to confiscation was committed by the petitioner after the coming into force of Rule 126L(16).

[19] It is clear from the allegations contained in the show cause notice that according to the respondents, the petitioner owned the undeclared gold since the commencement of Part XIIA but failed to declare it within the prescribed period in contravention of Rule 126L(1) and retained possession of it without declaring it in contravention of Rule 1261(10). The omission of the petitioner to declare the undeclared gold within the prescribed period in contravention of Rule 1261(1) and retaining possession of the undeclared gold in contravention of Rule 1261(10) rendered the undeclared gold liable to confiscation at the latest by 28th February 1963 and if it had been seized by any authorised person, it could have been confiscated under Rule 126M at any time prior to 24th June 1963 when Rule 126L(16) was introduced. The undeclared gold had already become liable to confiscation prior to 24th June 1963 and no act or omission was required to be done after 24th June 1963 to render the undeclared gold liable to confiscation. It is no doubt true that the petitioner continued in possession of the undeclared gold even after 24th June 1963 and was in possession of the same on 20th November 1964 when it was uncovered by the raiding officers but that was not an act or omission which rendered the undeclared gold liable to confiscation. The act or omission which rendered the undeclared gold liable to confiscation had already been committed prior to 24th June 1963 and the penalty provided in Rule 126L(16) was therefore not attracted. It is significant to note that the event which attracts penalty is not a breach of any provision of Part XIIA simpliciter but it is the doing of an act or omission which would render gold liable to confiscation. Moreover, the offence contemplated by Rule 126L(16) is not a continuing offence. What attracts penalty under Rule 126L(16) is the act or omission which renders gold liable to confiscation. In the present case, the undeclared gold had already become liable to confiscation by reason of an act or omission of the petitioner prior to 24th June 1963 and there was accordingly no question of the petitioner doing any act or omission after 24th June 1963 which would render the undeclared gold liable to confiscation. Rule 126L(16) had therefore no application to the case of the petitioner and the impugned show cause notice issued by the Assistant Collector, Central Excise, was without jurisdiction in so far as it sought to impose penalty on the petitioner under Rule 126L(16).

[20] We, therefore, allow the petition and make the rule absolute to the limited extent that a writ of mandamus shall issue quashing and setting aside the impugned show cause notice in so far as it calls upon the petitioner to show cause why penalty under Rule 216L(16) should not be imposed upon him on the allegations contained in it. Since the petitioner has partly succeeded and partly failed, the proper order for costs would be

that each party should bear and pay its own costs.

Petition partially allowed.