PETITIONER:
SHANTI PRASAD JAIN AND ANOTHER

Vs.

RESPONDENT:
DIRECTOR OF ENFORCEMENT, FOREIGN EXCHANGE REGULATION AND

DATE OF JUDGMENT:
04/10/1962

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
SINHA, BHUVNESHWAR P.(CJ)
GAJENDRAGADKAR, P.B.
GUPTA, K.C. DAS
SHAH, J.C.

CITATION:
1964 AIR 1023 1963 SCR Supl. (1) 514

ACT:
Foreign Exchange-Acquisition by Central Government-Offer for sale by owner-If must cover acquisition both before and after Notification-When must be made-Foreign Exchange Regulation Act, 1947 (7 of 1947), ss. 9,23-Notification dated March 25, 1947.

HEADNOTE:
The first appellant accompanied by his wife, the second appellant, visited foreign countries on business. He was allowed foreign exchange amounting to 337 and 1410 U. S. dollars, the visit being limited to two months. The second appellant 'was not allowed any foreign exchange and was allowed to go on the representation that a foreign company will bear all her expenses for the trip. When after three months the appellants returned to Delhi, the Customs authorities found on the person of the first appellant travelers cheques of the value of 2590 U.S. dollars. The Director of Enforcement took the appellant's explanation and on adjudication found that the appellants had received a sum of 3500 U. S. dollars as gift, were owners of it and contravened s. 9 of the Foreign Exchange Regulation Act, 1947, read with Notification dated March 25, 1947, issued
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thereunder, for failing the offer the foreign exchange for sale as required thereunder within a month of their becoming owners thereof. He, therefore, forfeited the travellers cheques to the extent of 1990 U. S. dollars found with them and imposed a penalty of Rs. 18000 on the first appellant under s. 23 of the Act. The appellants appealed to the Appellate Board which confirmed the order of the Director.
Held, that s. 9 of the Foreign Regulation Act applied not merely to foreign exchange owned or held at the date the Act came into force but also to foreign exchange acquired after that date. The words "or who may hereafter become the owner of any foreign exchange" in the Notification, therefore, were not ultra vires the section. It must be held that those words were implied in the section and the main purpose of the Notification was to specify what kind of foreign

exchange was to be offered for sale thereunder.
The Notification was clear that the offer of sale was to be made within a month of acquisition of ownership of the foreign exchange and not within a month of arrival in India.

JUDGMENT:
CIVIL APPELLATE JURISDICTION : Civil Appeal No. 617 of 1961.
Appeal by special leave from the order dated October 27, 1960, of the Foreign Exchange Regulation Appellate Board, New Delhi in Appeal No. 61 of 1960.
Sachin Choudhri, N. Bajoria and B. P. Maheshwari, for the appellants.
Bishan Narain, F. D. Mahajan and P. D. Menon, for the respondents.
1962. October 4. The judgment of the Court was delivered by
WANCHOO, J.-This is an appeal from the order of the Foreign Exchange Regulation Appellate Board and arises in the following circumstances
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Appellant No.1 went to Europe and the United States of America in connection with business, and his wife, appellant No. 2, accompanied him. The first appellant is the Chairman of Sahu Jain Limited. They left India on June 30, 1958 and visited several countries in Europe including West Germany. Eventually they reached the United States of America on August 5, 1958. They left the United States on September 22, and arrived at Delhi on October 1, 1958. The first appellant had been allowed foreign exchange amounting to POUND 337 (equal to Rs. 4500/-) and 1410 U. S. Dollars (equal Rs. 6,750/-). Further, Messrs. Sahu Jain Limited had been informed that the exchange was sanctioned on condition that the visit was limited to a period of two months. The second appellant was not allowed any foreign exchange, but her visit was sanctioned on the representation that a certain company in the United States would bear all the expenses of her trip to that country.
When the appellants returned to Delhi on the 1st of October, the Customs authorities found travellers cheques of the total value of 2590 U. S. dollars on the person of the first appellant. They were detained and the travellers cheques were handed over to the Enforcement Directorate under the orders of a magistrate. Thereafter the appellants were required to furnish certain information about their trip abroad including particulars about how they came to be in possession of these cheques. It will be noticed that the amount of these cheques was more than the total dollar exchange sanctioned to the first appellant. The explanation given by the appellant was that travellers cheques worth 1500 U. S dollars were received as gift from Messrs. Maschinenbau Schoiz and Company, West Germany, and travellers cheques worth 1,000 U. S. dollars were received from Messrs. Chemiobau, Dr. A. Zieren, West Germany, and a sum of 1,000 U.S. dollars was received from Messrs. Hans Tobeason,
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Inc., New York. It was further explained that travellers cheques worth 1990 U. S. dollars, out of the total amount seized on October 1st, represented the unspent balance from the two gifts received in West Germany and the remaining travellers cheques worth 600 U. S. dollars formed the unspent balance of the foreign exchange sanctioned when the appellant had left India. It was also stated that the entire amount of 1,000 U. S. dollars received in New York

was spent in the United States. On receipt of this explanation, the Director of Enforcement issued notices to the appellants to show cause why adjudication should not be commenced against them for contravention of the provisions of s. 9 of the Foreign Exchange Regulation Act, No. VII of 1947, (hereinafter referred to as the Act) read with Notification dated March 25, 1947, issued thereunder. The notices said that the appellants had failed to sell the foreign exchange amounting to 3500 U. S. dollars referred to above acquire,_] by them abroad within one month of their becoming owners thereof as required by s. 9 of the Act read with the said notification. The appellants showed cause which was more or less the same as the explanation they had already given earlier. The Director of Enforcement then held adjudication proceedings and came to the conclusion that the sum of 3500 U. S. dollars was received by the appellants as gift and they were owners of it, and as they had not offered to sell this foreign exchange as required by s. 9 and the notification made thereunder, they were liable to penalties for contravening s. 9. The Director ordered the forfeiture of the travellers cheques to the extent of 1990 U. S. dollars found with the appellants. He also imposed a penalty of Rs. 18,000/on the first appellant under s. 23 of the Act; no penalty was imposed on the second appellant.

The appellants then went in appeal to the Appellate Board, and the contention that was raised there was that they were not the owners of this foreign

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exchange which had been given to them merely to defray their expenses in the United States and that instead of the various foreign companies spending the money on them directly, they gave the money to the appellants to be spent by them. It was also urged before the Appellate Board that the notification was ultra vires s. 9 of the Act, inasmuch as it dealt not only with the foreign exchange owned or held by per sons at the time the notification was issued but also foreign exchange which might thereafter come into the ownership of any person. Certain other contentions were also raised before the Appellate Board, but these contentions have not been raised before us in view of the judgment of this Court in Shanti Prasad Jain v. The Director of Enforcement(1). The two points therefore that arise for consideration are whether the appellants were owners of this foreign exchange and whether the notification is ultra vires s.9 of the Act. Both these points were decided against the appellants by the Appellate Board, which confirmed the order of the Director of Enforcement. Thereupon the appellants obtained special leave from this Court and that is how the matter has come up before US.

The question whether the appellants were owners of this foreign exchange is in our opinion concluded by the concurrent finding of fact of the Director of Enforcement and the Appellate Board. The Appellate Board has pointed out that the contention that the appellants were not the owners of this foreign exchange was ingenious but unacceptable. The appellants wanted to make out that though they had actually received the money, they were really spending it on themselves on behalf of the foreign corn- panies, which gave them the money for their expenses in the United States. The Appellate Board has rightly pointed out that this foreign exchange given to the appellants was nothing but a gift received by them and that the appellants themselves in the

(1) [1963] 2 S. C. R. 297.

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beginning had admitted that they had received these amounts as gift. 'It was only later that the ingenious argument was put forward on their behalf that though they had received the money, they were merely agents of the three companies which gave them the money for the purpose of spending it on themselves. We have no doubt that this is an absurd explanation and the fact is that the appellants received this foreign exchange as gift, even though the intention might have been to spend the amount on their trip in the United States of America. Further, as the Appellate Board has rightly pointed out, it is obvious that the money was given to the appellants outright, as otherwise the appellants would not have offered the amount found on them on October 1, 1958, for sale through the Reserve Bank as they did on October 25,1958. There can therefore be no doubt that the appellants became owners of this foreign exchange.

This brings us to the main point that was urged before us that the notification is beyond the terms of s. 9. Section 9 (omitting the portion not relevant for the purpose of this appeal) is in these terms:-

> "9. Acquisition by Central Government of Foreign exchange.-The Central Government may, by notification in the Official Gazette, order every person in, or resident in, India---
> (a) who owns or holds such foreign exchange as may be specified in the notification, to offer it, or cause it to be offered for sale to the Reserve Bank on behalf of the Central Government or to such person, as the Reserve Bank may authorise for the purpose, at such price as the Central Government may fix, being a price which is in the opinion of the Central Government not less than the market rate of the foreign exchange when it is offered for sale; (b)
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> Provided that the Central Government by the said notification or another order exempt any persons or class of persons from the operation of such order.
> Provided.....

The notification which was issued on March 25, 1947, is in these terms:-

> "In exercise of the powers conferred by section 9 of the Foreign Exchange Regulation Act, 1947 (VII of 1947), the Central Government is pleased to direct that every person resident in India who owns or who may hereafter become the owner of any foreign exchange whether held in India or abroad expressed in the currency of any country or territory specified in the schedule annexed to this Order, shall before the expiration of one month from the date of this Order, or in the case of a person hereafter becoming such owner, within one month of the date of his so becoming, offer such foreign exchange or cause it to be offered for sale to an authorised dealer being a person authorised by the Reserve Bank for the purpose, "against payment in rupees at the rate for the time being authorised by the Reserve Bank in pursuance of sub-section (2) of section 4 of the said Act for the conversion into Indian currency of the

foreign currency in which such foreign exchange is expressed.

"Provided that this order shall not apply to foreign exchange held by authorised dealers within the scope of their authority or to persons authorised by the Reserve Bank to hold foreign exchange for business or other purposes, or to persons not being citizens of India, who have obtained the permission of the Reserve Bank in behalf

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Schedule

"United States of America, Philippine Island.".

The contention on behalf of the appellants is that what s. 9 contemplates is that any person who owns or holds foreign exchange on the date of the notification has to offer it for sale as provided therein but it does not contemplate that a person who comes to be owner of foreign exchange after the date of the notification has also to offer it for sale. We are of opinion that there is no force in this contention. The section lays down that every person who owns or holds such foreign exchange as may be specified in the notification has to offer it for sale as provided thereunder. The reason why the section provides for a notification is that it was left to the discretion of the Central Government to decide on a consideration of the foreign exchange situation at a particular time as to which kind of foreign exchange would have to be offered for sale as directed by s. 9. For example, the notification may direct that U. S. dollars must be offered for sale but may not direct that, English pounds should be so offered for sale. The section as it stands is clearly applicable to foreign exchange owned or held at the date the Act came into force as well as to foreign exchange. which a person may acquire after the Act came into force. Learned counsel for the appellants conceded that s. 9 was not confined only to-foreign exchange held or, owned by persons in.. or resident in, India on the date the Act came into force but would also apply to any foreign exchange subsequently owned or' held; but his contention is that though the section applies not only to foreign exchange owned or held on the date the Act came into force but also on any subsequent date so long as the Act continues in force, the notification could only be issued with reference to foreign exchange owned or held on the date of the notification. It is therefore contended that the words "or who may hereafter become the owner of any

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foreign exchange" appearing in the notification go beyond the power conferred by s. 9 of the Act and the notification could only apply to foreign exchange owned or held up to the date of the notification. We are unable to accept this construction of s. 9. The Act is a permanent statute and s. 9 clearly provides that every person holding or owning such foreign exchange as may be specified in the notification contemplated thereunder has to offer it for sale as provided therein. The words of the section are not confined only to foreign exchange owned or held by persons on the date the Act was passed., the apply also to foreign exchange which may be owned or held by successors even after the Act came into force and such foreign exchange had to be offered for sale if there is a notification in that behalf. It is true that words corresponding to "who may hereafter become the owner of any foreign exchange" do not appear in the section.

But the words of the section in our opinion are clear and it is implicit in them that they apply not only to those persons who owned or held foreign exchange on the date the Act came into force but to those also who own or hold foreign exchange after that date, and the notification is mainly for the purpose of specifying the kind of foreign exchange which has to be offered for sale. The notification in the present case by using the words "or who may here after become the owner of any foreign exchange" merely makes explicit what was already implicit in the section. In fact, even if the impugned clause had not been included in the notification, it would have made no difference to the meaning. Like' the main section, the remaining part would have covered cases of owning and holding foreign exchange in the past as well as in the future. The clause has been added only to clarify the position, and that is all.

Further, if we were to accept the argument raised on behalf of the appellants we, would reach the startling result that a notification will have to be issued

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every day in order that the purpose of s. 9 which is to control foreign exchange which any person might own or hold on the date the Act came into force as well as foreign. exchange which any person might come to owner hold after the enactment of the Act, might be carried out. An interpretation which leads to such a, startling result cannot possibly be accepted. Besides, as we have already said, the words of s. 9 are clear and they apply not only to foreign exchange owned or held at the date of the Act but to foreign exchange which might be held or owned at any time thereafter and the notification is mainly required to indicate the kind of foreign exchange which may have to be offered for sale under s. 9. We are therefore of opinion that the notification is completely ultra vires s. 9. If that is so, it is not disputed by the, appellants that s. 9 read with the notification was contravened in this case in view of the finding of fact that the foreign exchange to the extent of 3500 U. S. dollars was gifted to the appellants and was owned by them.

It was also urged on behalf of the appellants that all that the notification required was that they should offer the foreign exchange with in one month of their return to India and that the appellants complied with that. This contention has no force for the notification requires that the offer should be made within one month of a person becoming the owner of foreign exchange. There is no warrant for reading in the notification that the offer has to be made within a month of the return of the person to India in case 'the foreign exchange is acquired while the person is abroad. The notification clearly requires an offer to sell within one month of a per-son becoming the owner of the foreign exchange. It has not been disputed that there was not impediments in the way of the appellants making such an offer within one month of their acquiring the foreign exchange. As they undoubtedly failed to do so, they have clearly contravened the notification read with s. 9 of the Act.

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Lastly, it is urged that the penalty imposed in this case is too heavy. This matter has been considered by the Appellate Board and we see no reason to differ from the Board on this question. We may only add that the first appellant who is the Chairman of the Sahu Jain Limited is a person of responsibility and position, and it is not expected that such a per-son would contravene the provisions of the Act.

The appeal is hereby dismissed with costs.
Appeal dismissed