

Ashok Kumar Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-19-1997

Reported in : (1998)(97)ELT548TriDel

Appellant : Ashok Kumar

Respondent : Collector of Central Excise

Judgement :

1. Shri G.K. Rana, learned Advocate at the outset questioned the jurisdiction in passing the Stay Order in Stay Petitions No.C/S/983-984/96-NB. He submits that in this case the gold was confiscated absolutely and the value of the gold biscuits was more than Rs. 2 lakh and, therefore, it was not within the jurisdiction of Single Member Bench to pass the Stay Order. He submits that thus the Stay Order suffers from jurisdictional competence and prays that the Stay Order may be recalled.

2. Shri P.K. Jain, learned SDR leaves it to the discretion of the Bench.

3. Heard the learned Counsel and the learned SDR. We note that the value of the gold biscuits confiscated absolutely is more than Rs. 2 lakh, therefore, the case should have been heard by a Division Bench.

Since the case was put up before a Single Member Bench and at the time of hearing the case the competence of Single Member Bench was not questioned. Hence the order. However, this being the case of jurisdiction, we are inclined to

accept the submission of the learned Counsel and accordingly recall the Stay Order. With the consent of both the sides stay petitions were heard.

4. Arguing the stay petitions, Shri G.K. Rana, learned Advocate submits that all the documents regarding legal procurement of the gold biscuits were produced by the applicants. He submits that the lower authorities did not examine the documents in their perspective and held against the applicants. He submits that the applicants are poor people, their sources of income are very low and therefore, any direction of deposit of any amount will create financial hardship to the applicants. He submits that they are very small wage earners and prays that the pre-deposit of penalty may be dispensed with.

5. Opposing the request for dispensing with the pre-deposit of penalty, Shri P.K. Jain, learned SDR submits that in all cases of illegal procurement of gold biscuits, the source of income illegally disposed of by the persons cannot be relied upon. He submits that the value of gold biscuits is more Rs. 17 lakh and some foreign currency about Rs. 5 lakh was also confiscated. He submits that to handle this much amount, the applicants should have some sources and, therefore, nominal amount of penalty imposed on the applicants will create no financial hardship to the applicants. He, therefore, prays that the applicants may be directed to deposit the entire amount of penalty.

6. Heard the submissions of both sides. On careful consideration of the submissions made, we find that the applicants are wage earners only.

There is no evidence placed before us that they have got sources of income. In these circumstances, we direct Shri Uma Shanker to deposit a sum of Rs. 10,000/- and Shri Ashok Kumar to deposit a sum of Rs. 5,000/- on or before 31-12-1997. Compliance thereof should be reported on 21st January, 1998. In addition to examining the compliance report and its being found proper, the appeals should also be listed for regular hearing on the same date along with Appeal No. C/233/96-NB.