

**Khandelwal Enterprises Vs. Collector of Customs and Central**

**Khandelwal Enterprises Vs. Collector of Customs and Central**

**SooperKanoon Citation :** [sooperkanoon.com/199](http://sooperkanoon.com/199)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Mar-25-1983

**Reported in :** (1983)(13)ELT1258TriDel

**Appellant :** Khandelwal Enterprises

**Respondent :** Collector of Customs and Central

**Judgement :**

1. In this Revision Petition to the Government of India, transferred to the Tribunal and heard as an appeal pursuant to Section 131B of the Customs Act, 1962, the material facts are - (a) the business premises of the Appellant were searched on 24-7-75 and rough emeralds alleged to be of foreign origin were recovered ; (c) the seized rough emeralds were found to weigh 33.593 Kgs. and in the opinion of the Jewellery Appraiser, the value thereof was Rs. 35,950/-. The Jewellery Appraiser also opined that they were of Brazilian origin.

2. In the proceedings that followed pursuant to the seizure and the statement of Appellant, it would appear that the Appellant was insisting upon being permitted to cross-examine the panch witnesses as well as the Jewellery Appraiser. They were, however, not offered for cross-examination, notwithstanding that it is their evidence, that is substantially relied upon by the Revenue, to prove the contravention of the prohibition and restrictions imposed under Section 3(1) of the Imports and Exports (Control) Act, 1947 read with Section 11 of the Customs Act, 1962. It is not as if the Appellant has to press his request for cross-examination of the witnesses.

3. They have to be offered for cross-examination and if the Appellant declined to cross-examine them that could have been sufficient ground to dispense with their cross-examination.

4. The Appellant would appear to have made a grievance of the denial of his right to cross-examine the main and material witnesses right through.

5. The Appellate Collector, however, brushed aside the contention based upon the failure of the Department to produce the aforesaid witnesses for cross-examination on the ground that the Appellant had not chosen to explain why and in what way the opinion of the Jewellery Appraiser was vague or unreasoned.

6. The right to cross-examine any witnesses whose evidence forms the basis for a finding of the alleged contravention is inherent and it is not necessary that he should explain as to why he wants to cross-examine them or how he may proceed in the cross-examination. If they were not offered for cross-examination the evidence of the witnesses to the Panchnama or the opinion of the Jewellery Appraiser is not worth any reliance whatsoever, not having been put to test.

7. To this extent, therefore, we are convinced there has been a failure of justice inasmuch as the Appellant was prejudiced in his defence for failure to produce the witnesses, in particular, Jewellery Appraiser for cross-examination.

8. We, therefore, set aside the order of the Appellate Collector of Customs, New Delhi, as well as the order in adjudication of the Deputy Collector of Central Excise and Customs, Jaipur and remand the matter to the latter for fresh consideration and disposal giving an opportunity to the Appellant to cross-examine all the witnesses to the Panchnama as well as the Jewellery Appraiser. The proceedings should be concluded by the Deputy Collector, Jaipur within four months from the date of this order.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**