

Motiwala and Sons Vs. Collector of Central Excise and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-30-1985

Reported in : (1989)(20)LC210Tri(Delhi)

Judge : M T D.C.

Appellant : Motiwala and Sons

Respondent : Collector of Central Excise and

Judgement :

1. This is a Revision Application originally filed before the Central Government, which was subsequently transferred to this Tribunal and treated as an appeal.
2. The Deputy Collector (Gold), Central Excise, New Delhi held the appellants guilty of contravention of Section 34 of the Gold (Control) Act, 1968 inasmuch as they delivered primary gold in the shape of standard bar and gold ornaments to Shri Kanwar Sain, who was neither a licensed dealer nor a refiner nor a certified goldsmith and imposed a penalty of Rs. 2,000/- on them under Section 74 of the Act. By the impugned order, the Appellate Collector reduced the penalty to Rs. 1,000/-, against which the present appeal has been filed. The Appellate Collector held the charge against the appellants as established because of the following reasons: (i) There are vouchers signed by Kanwar Sain as on behalf of Motiwala, (iii) The appellant's version that they were not aware that Shri Sain was acting as an agent on his own, does not sound plausible.

3. The main contentions of the appellants in the Revision Application were that they had not contravened any provision of the Gold (Control) Act ; the orders of the Deputy Collector and the Appellate Collector were based on mere guesswork, conjectures and surmises ; and that the Adjudicating Authority violated the principle of natural justice by not allowing the facility of cross-examination of Shri Kanwar Sain by the appellants.

4. During personal hearing, the learned Advocate for the appellants has argued that : (i) the appellants had the bonafide belief that Shri Kanwar Sain was a representative of M/s. Premnath Jewellers, a licensed dealer of Delhi. They never had any belief that Shri Sain was acting as an agent on his own.

(ii) No evidence or basis was furnished in the show cause notice in support of the charges framed against the appellants. It was totally vague and did not give an opportunity to the appellants to defend themselves against any specific evidence. The Show Cause Notice was, therefore, null and void. The learned Advocate has cited the following judgments in this connection ;New Samundri Transport Co. (P) Ltd. v. The State of Punjab and Ors.

(b) , Charandas Malhotra v. Assistant Collector of Customs and Ors.

(c) 1981 E.L.T. Page b4 (CBEC) (Appeal Case) In Re. Vaidyanath Tobacco Agency, (iii) Voucher No. 64 issued by M/s. Premnath Jewellers to the appellants would not attract any contravention of the Gold (Control) Act by the appellants.

(iv) The burden of proof that Shri Kanwar Sain was a dealer and that the appellants had the knowledge that he was acting on his own and not as a representative of M/s. Premnath Jewellers, was on the Department. The Department has not discharged that burden.

(v) The appellants requested for cross-examination of Shri Kanwar Sain and Shri Premnath, but the same was not allowed by the Adjudicating Officer. This is a denial of natural justice. The order is null and void. The learned Advocate has cited the following judgments in support of his contention ; (a) , Valimohamed Gulamhusain Sonawala & Co. v. C.T.A. Pillai, Additional Collector of Customs A

Others, (b) AIR 1961 Mysore Page-203, Nagar Mohan Rao and Anr. v. The Collector of Central Excise, Bangalore, (vi) There is no mens rea on the part of the appellants. In the absence of mens rea no penalty was to be imposed on them. The learned Counsel has cited the judgment of Supreme Court in the case of Hindustan Steel Ltd. v. The State of Orissa () in this context.

(vii) There is no evidence to prove that the appellants committed an offence. Imposition of penalty on a reputed gold dealer is a slur.

The order of penalty may be set aside.

5. The learned Senior Departmental Representative has reiterated the grounds of penalty as enumerated in points (i), (ii), and (iii) of the paragraph 2 of this order. She has also stated that jewellery was consigned to the appellants. Imposition of penalty on the appellants is, therefore, justified.

6. I have carefully considered the case records and the submissions of both sides. The Deputy Collector held the appellants guilty of contravention of Section 34 of the Act on the basis of the statement of Shri Ismail Bhai Abbas Bhai Motiwala, a partner of the appellant firm.

I find from this statement that Shri Motiwala stated that Shri Kanwar Sain was not their employee nor their commission agent. The appellants knew Shri Sain to be a representative of M/s. Premnath Jewellers. It is also stated that the appellants had not issued any standard gold or gold ornaments in the name of Shri Kanwar Sain, but he had carried such gold and gold ornaments from and on behalf of M/s. Premnath Jewellers.

In the issue voucher No. 154 dated 18.7.1978 of M/s. Motiwala & Sons, Shri Kanwar Sain signed on behalf the purchaser M/s. Premnath Jewellers. It is also stated in the said statement that the appellants paid labour charges at about Rs. 5/- per gram to M/s. Premnath Jewellers by bank draft or cheque, but they did not pay any travelling and other miscellaneous expenses to Shri Sain. This written statement does not indicate that Shri Kanwar Sain took primary gold and gold ornaments from the appellants on his own behalf or in his capacity as an

independent agent acting on his own; The statement says that he carried gold and gold ornaments on behalf of M/s. Premnath Jewellers. I do not find any material evidence to come to the conclusion that the appellants had any scope to believe that Shri Sain was acting on his own behalf or they had any such belief. On the contrary, Shri Sain's endorsement on the issue voucher No. 154 dated 18.7.1998 of M/s'.

Moti-wala & Sons goes to indicate that he was acting on behalf of purchaser M/s. Premnath Jewellers. The appellant's argument that they knew Shri Kanwar Sain to be a representative of M/s, Premnath Jewellers has, therefore, enough of force. The fact that the appellants were familiar with Shri Sain can not controvert this argument. The charge against the appellants can not also be proved on the basis of voucher signed by Shri Kanwar Sain on behalf of Motiwala as this was not tested by cross-examination of Shri Sain by the appellants. In the circumstances, the impugned order holding the appellants guilty of contravention of Section 34 of the Gold (Control) Act is not found to be justified.

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