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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-30-1986

Reported in : (1986)(8)LC411Tri(Delhi)

Appellant : Raman Kishore

Respondent : Collector of Customs

Judgement :

1. This appeal is directed against the Order-in-Appeal No. 934, 935-CH/83 dated 25.11.83 passed in C. No. APPL/DLH/CH/103 dk 112/81 by the Collector of Customs (Appeals), New Delhi.

2. Brief facts of the case so far as relevant for the purpose of this appeal are that on 19.9.80, the Customs Preventive Staff, Amritsar apprehended one Shri Dinesh Kumar Mehra at the Railway Station, Amritsar and on search of his baggages 230 coins of silver weighing 3.043 Kgs. valued at Rs. 8521.80 P were recovered. On interrogation, he stated that on 17.9.80 he went to Delhi in connection with some assignment of his employer M/s. Castle Mills Depot Katra Jaimal Singh, Amritsar and before his departure for Delhi the appellant gave him a letter for delivery to one Shri Hira Lal, an artisan of Delhi and was also verbally told by the appellant that he should bring silver in the shape of coins from said Shri Hira Lal. However, while admitting the recovery he disowned any concern with the seized coins. Suspecting, the Customs staff seized the said coins under Section 110 of the Customs Act on the belief that the same were liable to confiscation under the Act. On 20.9.80, the appellant tendered his statement before the Customs Officer

stating that he is a partner of M/s. Durga Das Seth Jeweller, Amritsar and further owned up the seized 230 silver coins. He further added that about two months back he had sent some old and used silver utensils and silver ornaments to the said artisan, Shri Hira Lal for the purpose of refining them and manufacture of different type of coins with religious motives. He further stated that about a week back he asked Shri Dinesh Kumar to contact the said artisan, Shri Hira Lal and to bring silver coins from him if the same were ready. Consequently both the appellant and Shri Dinesh Kumar Mehra were called upon to show-cause as to why the seized silver coins be not confiscated under Section 113 of the Customs Act as the same were reasonably believed were being attempted to be exported out of India in violation of the provisions of the Notification No. F.I/EC/ 73-a dated 1.1.74 issued under Section 18(1) of the Foreign Exchange Regulation Act, 1973 read with Section 11 of the Customs Act, 1962 and as to movement of silver having been restricted vide Notification No. 50-Customs and 51-Customs dated 27.3.80 issued under sections 11-H and 11-K of the Customs Act and the same were accordingly liable to confiscation under Section 113 of the Customs Act and also asking them to show-cause as to why penal action should not be taken under Section 114, ibid. In reply to the show-cause notice, Shri Dinesh Kumar stated that he had nothing to add to that he had already stated in his statement at the time of seizure.

While the appellant in his reply to the show-cause notice stated that the seized silver coins were not actually coins but were silver Sovereigns having religious value and are meant for Lakshmi Puja on the occasion of Diwali. After the usual enquiry, the Adjudicating Authority absolutely confiscated the seized silver coins and also imposed a personal penalty of Rs.500/- on the said Shri Dinesh" Kumar carrier and Rs. 2,000/- upon the appellant being the owner of the silver. The appellant and the other Shri Dinesh Kumar preferred their seperate appeals before the appellate authority. The appellate authority by the common order upheld the order of the Adjudicating Authority but instead of absolute confiscation gave the appellant an option to redeem the seized coins on payment of a redemption fine of Rs. 2,000/-. Against this appellate order, only the present appellant has filed the instant appeal.

3. The learned counsel, Shri Arvind Nigam, Adv. assisted by Shri Harish Gulati, Advocate for the appellant while admitting the recovery and the ownership of the seized silver coins vehemently contended that the seized silver coins were neither coins nor silver. As such, according to him, no offence is made out. In this connection, he drew my attention to the fact that the Adjudicating Authority confiscated the seized silver coins treating the recovered silver pieces to be bullions, whereas the Appellate Authority below while disagreeing with the Adjudicating Authority on the point that recovered silver coins were bullions upheld the order of the Adjudicating Authority holding that recovered silver coins were coins.

4. As regards the argument that the seized "silver coins" were "not coins", I agree with the learned counsel for the appellant. For, coin in a legal sense is always understood to mean metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used. Further, we find that the word "coin" has also been defined under Section 2(e) of the Gold (Control) Act, which reads thus:- "'coin' means a thing which is stamped and issued by or on behalf of Government or by any other authority in exercise of its sovereign power in order to be used for the time being as money, whether such coin is a current coin or not." Since the recovered silver coins were not admittedly stamped and issued by or on behalf of Government or by any authority in exercise of its sovereign power in order to be used for the time being as money, I am of the view that by no stretch of imagination the recovered silver bullions which have the circular shape like a coin can be termed as 'coin'. That the reasonings given by the learned Appellate Authority below that the recovered silver coins are coins because they are understood as such in common parlance and trade is also not sound because the same are never understood or dealt with as coins but are always sold and purchased at the prevalent rate of silver bullion in the market and a little amount is also charged as labour charges for bringing the silver bullion into circular shape with emblem of Laxmi, Ganesh etc.

5. As regards the contention of the learned counsel for the appellant that the recovered silver bullions were not bullions and therefore no offence is made out, he has cited the case of C.S.T. v. G.S. Pai & Co.

reported in 1980 SCR 938. In that case, the question which arose for consideration before their Lordships of the Supreme Court was "whether certain ornaments and other articles of gold purchased by the assessee with a view to melting them and making new ornaments or other articles out of the melted gold fall within Entry 56 in the First Schedule of the Kerala General Sales Tax Act, 1963 which reads "Bullion and Specie"? While deciding the question, their Lordships after referring to the various definitions given to the term "bullion" and "specie" in the Shorter Oxford Dictionary, Jowitt's Dictionary of English Law, Wharton's Law Dictionary and "Words and Phrases" - Permanent Edition - Vol. 39A, held' that the ornaments and other articles of gold purchased by the assessee do not fall within the Entry 56 and they are accordingly liable to be taxed not at the lesser rate of 1 per cent applicable to "bullion and specie", but at the general rate of 3 per cent under Section 5-A read with Section 5(i) and (ii) of the Kerala General Sales Tax Act.

6. For, appreciating the arguments advanced by the learned counsel for the appellant in the right perspective, it would be useful to refer to the Government of India, Ministry of Finance, Department of Revenue's Notification No. 51-Custom, dated 27.8.80, issued under Section 11-K of the Customs Act, 1964. Under the said Notification, the silver bullion and coins which have been declared to be "specified goods" in terms of Notification No. 7-Custom, dated 3.1.1969 issued under Section 11-1, ibid, and the aggregate market price of which exceeds the thousand rupees cannot be transported from, into or within the specified area unless they are accompanied by a valid transport voucher under Sub-section (1) of Section 11-K of the Customs Act. In the instant case, admittedly 230 articles of silver in circular shape were recovered from the possession of the appellant. Since the recovered articles of silver were found to have the emblem of Laxmi, Ganesh, Guru Nanak, Mahatma Budh, Hanuman etc., the learned counsel for the appellant wants this Tribunal to hold that the recovered circular pieces of silver cannot be said to be "bullion" within the meaning of Notification No. 7-Custom, dated 3.1.1969, supra. I am afraid this contention of the learned counsel for the appellant cannot be accepted.

In Earl Jowitt's Dictionary of English Law, 'Bullion' is defined as "uncoined gold and silver in the mass" and it is stated that "these metals are called so either when melted from the native ore and not perfectly refined, or when they are perfectly refined, but melted down into bars of ingots or into any unwrought body of any degree of fineness." In Encyclopaedia Britannica, it is stated that "bullion" may be bar-gold or gold-dust or coins of many different degrees of fineness. In the instant case, it is the case of the appellant himself that the recovered silver circular pieces were prepared out of the old and used silver utensils and they were needed for sale. As such, in the teeth of this admission applying the Dictionary meaning given in Ea/1 Jowitt's Dictionary of English Law, supra, it can safely be said that the recovered articles of silver which are circular in shape and have the emblem of Laxmi, Ganesh, Guru Nanak, Mahatma Budh, Hanuman etc. are nothing but bullions. For, according to the appellant himself, they were melted down into circular shape from the silver utensils. The argument that the recovered circular pieces of silver have the emblem of Laxmi, Ganesh etc. and that they were perfectly refined is of no consequence because according to Earl Jowitt's Dictionary of English Law, supra, bullion is a bullion even though when silver metal is melted down into any unwrought body of any degree of fineness. On the point of clarity, it may be stated that simply because the recovered articles of silver pieces were perfectly refined, the same cannot be taken out of the definition of "bullion". When silver bullion is perfectly refined by melting down into bars of ingots or into any unwrought body or degree of fineness, the character of the silver bullion is not lost. In my view, this interpretation would also be in consonance with the Notification No. 51-Custom, dated 27.8.80 issued under Section 11-K of the Customs Act, 1962 and Notification No.7-Custom, dated 3.1.1969 which controls the movement of silver bullion.

Any other interpretation would frustrate the very object of the said Notification which are issued under the Customs Act and in that case every shrewd smuggler would melt down the silver bullion into the circular shape resembling like a coin with the emblem of Laxmi, Ganesh, Guru Nanak, Mahatma Budh, Hanuman etc. I am of the firm view that guilty should not be allowed to go scot free out of the clutches of the law and the religion should not be made the scapegoat.

7. For the reasons stated above, the case of C.S.T. v. G.S. Pai & Co., supra, cited by the leanred counsel for the appellant is not applicable to the facts and the circumstances of the instant case and to the question involved in the appeal in hand. In that case, as already stated above, the only question involved was as to whether certain ornaments and other articles of gold purchased by the assessee with a view to melting them and making new ornaments or other articles out of the melted gold be described as "bullion" or/and "specie" within the meaning of Entry 56 in the First Schedule of the Kerala General Sales Tax Act, 1963. Admittedly in the case in hand, it was not the case of the appellant that he had purchased the recovered articles of silver which are in the circular shape for the purpose of melting them and making new articles out of the melted bullion.

8. In the light of the foregoing discussions, while differing with the view of the Collector of Customs (Appeals), holding that the recovered silver articles were coins and agreeing with the view of the Adjudicating Authority that the same were silver bullions, I uphold the impugned Order-in-Appeal and reject the appeal being devoid of any substance.