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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-13-1986

Reported in : (1987)(10)LC271Tri(Delhi)

Appellant : Kamlesh Seth

Respondent : Collector of Central Excise

Judgement :

1. This is an Application for Rectification of Mistake in the order of this Tribunal No. A/255-257/1986-NRB, dated the 30th May, 1986.

2. In the order appealed against before the Tribunal, the Collector of Central Excise, New Delhi had directed confiscation of 874.850 gms. of gold ornaments and 67 gms. of gold rawa and wire, but Had allowed the same to be redeemed on payment of fine of Rs. 45,000/-. The applicants have deposited the said amount and obtained the release of the gold. In the appeal, the Tribunal decided that the order of the Collector confiscating 874.850 gms. of gold ornaments be set aside and as such, ornaments be released to the appellants. The order of the Collector confiscating 67 gms. of gold, however, was upheld and the fine in redemption thereof was sustained. The penalties of the order of Rs. 7,500/- on each of the appellants was ordered to be reduced from Rs. 7,500/- to Rs. 2,000/- each and the balance of the penalties, it was ordered should be refunded forthwith. It is now submitted before us that there is a mistake on the face of record in the passing of the above cited order of this Tribunal inasmuch as no orders were passed regarding the amount of redemption fine which would stand appropriated towards

the release of 67 gms. of gold, the confiscation of which was upheld by the Tribunal. It is urged that there should have been clear consequential directions in the order of the Tribunal regarding the balance amount of redemption fine covering gold ornaments amounting to 874.850 gms. being refunded to the appellants. In the absence of such orders, it is submitted, the Collector of Central Excise, Delhi is unable to allow any refund of the redemption fine covering the gold, the confiscation of which has been set aside.

3. Shri Harbans Singh, learned advocate appears for the appellants and reiterates the above facts.

4. Shri Rakesh Bhatia, learned SDR has stated that in the absence of any orders of the Tribunal, there cannot be any basis for the Collector of grant any refund of redemption fine.

5. We have carefully considered the facts of the case and the submissions made before us. We find that while passing the order cited above, this Bench had reduced the penalties imposed on the two appellants and while doing so, issued clear direction that the balance of the penalties, if recovered, may be refunded forthwith. The confiscation of 67 gms. of gold and the car and the fine in redemption thereof were sustained but the confiscation of 874.850 gms. of gold was set aside. Consequential relief by way of refund of amount of redemption fine covering such gold should have also been a part of the order, but this was inadvertantly omitted.

6. In view of our aforesaid findings, we direct that the following may be inserted at the end of para 4 of N.R.B. Order No.A/255-257/1986-NRB, dated the 30th May, 1986.

"In view of the order setting aside the confiscation of 874.850 gms.

of gold, the redemption fine is reduced from Rs. 45,000/- to Rs. 10,000/- (Rs. Ten thousand only) and the balance should be refunded to the appellant." 7. In the course of the proceedings, the Bench has also observed that there is a typing mistake in Para 1(c)(i) of its above cited order which begins with the figures and words '874.50 gms.' of ornaments.

This should be corrected to read "874.850 gms. of ornaments".