

P.N. Murugesu Mudaliar Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Oct-21-1986

Reported in : (1987)(11)LC25Tri(Chennai)

Judge : S Kalyanam

Appellant : P.N. Murugesu Mudaliar

Respondent : Collector of Central Excise

Judgement :

1. This appeal is directed against the Order of Collector of Central Excise (Appeals), Madras dated 30.9.1985 confirming the order of the Deputy Collector of Central Excise, Madras dated 28.11.1984 imposing a penalty of Rs. 5000/- on the appellant under Section 74 of the Gold (Control) Act, 1968, hereinafter referred to as the Act.

2. On 30.11.1982, the Central Excise Officers of Gudiyatham-II Range searched the residential premises of the appellant at Gudiyatham and recovered from a steel cupboard on the eastern side of the house, a paper packet containing 4 gold biscuits with foreign markings. These gold biscuits were found to be of 24 ct. purity and totally weighing 467.200 gms. valued at Rs. 80.358/-. Since the appellant is neither a licensed gold dealer nor a certified goldsmith and could not account for the licit possession of the gold biscuits of foreign origin, they were seized by the authorities under mahazar as per law. The appellant gave a statement on 30.11.1982 before the Superintendent of Central Excise, Gudiyatham II Range stating that he purchased the gold biscuits under seizure from one Ekambara Mada-liar about 16 years prior to seizure with intention of manufacturing gold ornaments for his family use. It is in these circumstances, after further investigations, proceedings instituted against the appellant by the authorities ultimately resulted in the present impugned order, now appealed against.

3. Shri Jagadeesan, the learned Counsel for the appellant submitted that the impugned order is violative of the principles of natural justice inasmuch as the appellant's request for cross examination of the mahazar and statement witnesses was not granted. It was further urged that the appellant had some health problem and was undergoing treatment between 14.11.1982 to 28.11.1982 for acute gastro enteritis and again between 29.11.1982 to 12.12.1982 with the result at the time of seizure, the appellant did not know the nature of documents he was signing for. It was further contended that the seizure of the gold biscuits from the appellant's house would not indicate that the appellant was in conscious possession of the same. The statement recorded from the appellant by the authorities and relied upon in the impugned order was also assailed as not voluntary and true and was brought about under circumstances of threat and coercion.

4. Shri K.K. Bhatia, the learned SDR contended that the gold biscuits have been recovered under mahazar as per law attested by witnesses and the appellant himself as well as his son. The learned SDR further urged that the statement of the appellant dated 30.11.1982 is voluntary and true and would merit acceptance. The learned SDR further contended that mahazar being a contemporaneous document evidencing seizure of incriminating documents, the appellant cannot claim to have suffered any prejudice by reason of the fact that

the mahazar witness was not produced for cross examination.

5. I have carefully considered the submissions of the parties herein.

The plea of the learned Counsel that the impugned order is violative of the canons of natural justice inasmuch as the request of the appellant for cross examination of the mahazar and statement witnesses was not granted is bereft of substance in the facts and circumstances of this case. As rightly contended by the learned SDR, mahazar is merely a contemporaneous document than comes into existence when incriminating articles are seized by the authorities as per law. Mahazar is only a document evidencing such seizure and in the instant case, it is not disputed that the gold biscuits under seizure were actually recovered from the appellant's residential premises. Therefore, in my view, denial of opportunity to cross examine the mahazar witnesses in the facts and circumstances of this case, has not caused any prejudice to the appellant in the conduct of his defence and is therefore of no consequence. The important factor I should like to take note of in this context is the fact that the mahazar has been signed not only by the appellant but also by the appellant's grown up son. I, therefore, hold that the belief of violation of natural justice is not acceptable. The appellant has given a statement on 30.11.82 clearly admitting that the gold biscuits under seizure were purchased by him from one Ekambara Mudaliar about 16 years earlier with the intention of manufacturing gold ornaments for his family use. This statement has been signed by the appellant and the recitals in the statement have been written by the appellant's son Shri Ganesan. There is also an endorsement in the statement to the effect that the contents were read over by the appellant's son Ganesan and admitted by the appellant. The appellant admittedly did not resile or retract from this statement till after he sent a representation on 14.12.1982 and there is no explanation whatever for such a belated retraction. The learned Counsel merely pleaded that the appellant was suffering from certain ailments which prevented him from resiling from the said statement earlier. I am not inclined to accede to such a plea and I, therefore, reject the retraction dated 14.12.1982 as belated and unsubstantiated. I have gone through the statement recorded from the appellant and I am satisfied that the same is voluntary and true and merits acceptance. Even assuming for the purpose of argument that consequent on the illness, the appellant did not retract his statement earlier, it does not stand to any reason as to why it has not been retracted by his grown up son Ganesan if really the plea that the statement was brought about under threat and coercion is true. The denial of opportunity to cross examine the witnesses who have attested the statement is of no consequence in this case because law does not require a statement recorded during the investigation under the Act to be attested by any person. Apart from it, it is not as if the Department has recorded any statement separately from the attestors to the statement of the appellant and placed reliance on such statement. Therefore, on consideration of the entire evidence on record, I am inclined to hold that the charge of contravention under Section 8 (1) of the Act is clearly brought home against the appellant and I, therefore, confirm the finding of the authorities below. However, taking into consideration the value of the gold under seizure which is about Rs, 80,358/- as arrived at by the adjudicating authority penalty of Rs. 5000/- imposed on the appellant under the impugned order cannot be said to be harsh or excessive warranting any reduction. I, therefore, confirm the quantum of penalty also. In the result, the appeal is dismissed.

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