P.B. Indorker and B.B. Indorker Vs. Cellector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-05-1987

Reported in : (1987)(12)LC275Tri(Mum.)bai

Judge : D T K.S.

Appellant : P.B. Indorker and B.B. Indorker

Respondent : Cellector of Central Excise

Judgement :

1. Sarvashri P.B. Indorker and B.B. Indorker filed appeals under old Section 80 of the Gold (Control) Act to the Gold Control Administrator and these have been transferred to the Tribunal in terms of Section 62-K ibid and are to be treated as appeals to the Tribunal. These appeals are against the common order number 1/Gold/ 1981, dated 15.5.1981 passed by the Collector of Central Excise, Baroda, levying penalties of Rs. 1,000/- and Rs. 25,000/- respectively on the appellants under Section 74 of the Gold (Control) Act for contraventions of Sections 55 and 41 of the Gold (Control) Act. On behalf of the appellants Shri Vora first briefly set out the facts of the case as incorporated in the Collector's order. He highlighted the Collector's order under which he had dropped the charges of contraventions of Sections 8 and 27 against the appellants but upheld the contraventions of Sections 41 and 55 and accordingly penalised the appellants. Coming to the merits of the appeals of Shri P.B. Indorker, Shri Vora submitted that the appellant does not contest the contraventions of Sections 41 and 55 which were due to his ignorance.

The plea in the appeal would be confined against the penalty of Rs. 1,000/- levied on Shri P.B. Indorker. Explaining the contravention, Shri Vora submitted that only a small quantity of 55 grams of ornaments was not entered in the GS 13 account of Shri P.B. Indorker and for such a minor infraction of law, the penalty of Rs. 1000/-was very harsh. In reply to my query Shri Vora submitted that the value of gold ornaments would be Rs. 5,000/- approximately. Shri Vora however could not explain the length of time for which the entry had remained to be made before the same was discovered by the Gold Control Officers. However, he submitted that this was due to ignorance on the part of the appellant.

In support of his plea for relief in penalty, Shri Vora relied on the Calcutta Bench's decision reported in 1985 (21) E.L.T. 807 : 1985 ECR 1595 Cegat Cal. which incorporated the Supreme Court's judgments in the case of Hindustan Steel Ltd. ECR C 321 SC and in the case of A.M. Ginna v. Amuliya Kumar Biswas. Shri Vora further relied on the Madras Bench's decision reported in 1987 (27) E.L.T. 518 : 1987 (12) ECR 266 (Cegat SRB), wherein the Madras Bench of the Tribunal had reduced the penalty from Rs. 10,000/- to Rs. 1,000 relying on the Supreme Court's decision.

Shri Vora submitted that the penalty of Rs. 1,000/- on the appellant Shri P.B. Indorker may also be reduced suitably.

2. As regards the appeal of Shri B.B. Indorker, Shri Vora also conceded that there had been contraventions of Sections 41 and 55 of the Gold (Control) Act. Shri B.B. Indorker with his two sons carried out the work of certified goldsmiths. This was their family business. They were working from the same premises. Shri B.B. Indorker had maintained the correct rojmel showing all the transactions. Shri Vora however clarified that this rojmel was not a statutory register and so far as this statutory register was concerned in GS 13 form the same had not been maintained correctly and transactions of ornaments weighing 1093.700 grams valued at Rs. 90,000/-approximately were not entered in the GS 13 account. However, Shri Vora submitted that the rojmel had been maintained for the purpose of income tax assessment of the appellant and this would indicate that the appellant had no intention for contravening the Gold (Control) law or for evading the income tax.

Out of 1093.700 grams ornaments some ornaments were received only for polishing and these were not manufactured by him. In these circumstances Shri Vora prayed that the penalty of Rs. 25,000/- levied on Shri B.B. Indorker was out of all proportion and relying on the decisions cited by him in the appeal of Shri P.B. Indorker Shri Vora requested that the penalty may be reduced to a few hundred rupees to meet the ends of justice.

3. On behalf of the Collector Shri Senthivel contended that the appellants had admitted the facts of the case including the contraventions of the Gold (Control) Act. Their appeals were for leniency. So far as the appeal of Shri B.B. Indorker was concerned, Shri Senthivel submitted that the penalty of Rs. 1,000/- levied on him was quite lenient in the facts and the circumstances of the case. As regards the appeal of Shri B.B. Indorker, Shri Senthivel contended that gold ornaments weighing 1097.700 grams included inter alia primary gold weighing 76.838 grams as held by the Collector in his adjudication order. The GS 13 account was required to be maintained by statute and the non-compliance with this requirement was a serious matter. In this behalf Shri Senthivel relied on the judgment of the Allahabad High Court in the case of Kasinath Sheth reported in Cen-Cus Gold Control Manual page 11/328 and contended that non-maintenance of statutory accounts under the Gold (Control) Act was a serious matter, and was not to be viewed leniently. Senthivel suhmitted that the penalty of Rs. 25,000/- for the contravention of the law in respect of gold valued at Rs. 90,000/- approximately was not very harsh. He further submitted that the contraventions of law had gone on for a long period of time.

Therefore, there was no case for leniency to be shown to the appellant.

4. In reply Shri Vora submitted that the object of imposing penalty was to act as a way of reforming offender and not for completely putting him out of business. The amounts of penalty were disproportionate to the magnitude of the offences committed by the two appellants. The appellants had accepted their fault and there was no mala fides in committing the offences. In such circumstances the Supreme Court's judgment relied by him would come to the rescue of the appellants and they deserve mercy. Further, this was not a case where they had evaded payment

of Government Revenue. Therefore, the appeals merit mercy as pleaded by the appellants.

5. I have examined the submissions made on both the sides. In the case of appeal of Shri P.B. Indorker the non-entry is in respect of only one single transaction. The weight of gold ornament is reported as 55 grams valued at Rs. 5,000/- approximately. In this transaction the appellant would not have been able to earn much. Considering this fact and also the fact that the appellant was exonerated of the charges of contravening Sections 8 and 27 which were more serious in nature, I am inclined to show leniency as pleaded by the appellant. Accordingly, I reduce the penalty from Rs. 1,000/- to 200/- (Rupees Two Hundred only).

So far as the appeal of Shri P.B. Indorker is concerned, the same considerations for leniency would prevail. The penalty of Rs. 25,000/- levied with relation to the offences of gold valued at Rs. 90,000/- only is considered to be too harsh. The Collector's order confirms that the offences were (not made with a deliberate motive. In these circumstances, the amount of penalty is unduly harsh. Accordingly I reduce the same from Rs. 25,000/- to Rs. 3,000/- (Rupees Three thousand only). Except for these modifications, the orders of the Collector's are confirmed and the appeals are otherwise rejected.