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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-30-1987

Reported in : (1987)(12)LC889Tri(Delhi)

Appellant : Ram Parkash

Respondent : Collector of Central Excise

Judgement :

1. Heard Shri K.R. Mehta, Consultant and Shri Jaswant Singh, Advocate, for the appellants and Shri S. Krishnamurti, SDR for the department.

2. Shri Mehta emphasizes that appellant is a certified goldsmith for more than 20 years. It is submitted that the entire case has been handled by the department in a strange manner. The show cause notice issued refers to Defence of India Rules, 1962, which were abrogated in 1968. The learned consultant, however, conceded that this would not vitiate the show cause notice. It is further submitted that at the time of seizure, statements were recorded under threat and intimidation.

This has been stated by the witnesses also. In fact, the witnesses have denied that the statements were recorded in their presence.

3. It is further pointed out in defence that G.S. 13 register was duly maintained by the appellants. At the time of the visit of the Central Excise Officers, it was not produced because the Munim was working out the job charges for Income-tax purposes. But the G.S. 13 register was produced on the day of the seizure itself.

Since this was shortly after office hours, the seizing Officer chose to record the receipt of the register on the following day.

4. It is also submitted that the show cause notice itself admits that there were some pawned and old gold ornaments. Appellant, it is clairned, was undertaking money lending on pawning of ornaments under certificate of U.P. Government.

5. It is also urged that under Section 71 of the Gold (Control) Act, order of confiscation cannot be passed on 3rd party pawned items. It is submitted that the items seized included ornaments which had come from M/s. Sohan Lal & Sons. Sale vouchers were produced which were pre-authenticated by the Excise Officers and could not be fabricated.

These were also 3rd party goods and no offence has been established in respect of the goods. No notice was issued as required under Section 79 of the Act under this case also.

6. It is emphasized that all the items were duly entered in G.S. 13 register and at the time of hearing all the owners were present but this was not given due consideration by the lower authorities.

7. The learned consultant emphasizes that the gold in question should not have been confiscated without a notice in writing to the owners of the gold informing them of the grounds and giving them a reasonable opportunity of making a representation. In this connection, Shri Mehta has relied on the following case law :Ramjilal Kundam Lal v. Collector of Customs and Central Excise, New Delhi.Dwarka Prasad Gupta v. Collector of Central Excise, Delhi.

8. Shri Krishnamurti reiterates the stand taken in the orders of the lower authorities.

9. he facts of the case and the submissions made have been carefully considered. It is observed that the case largely rests on the fact that when the departmental officers visited the premises of the appellant on 26-7-1982, the G.S. 13 register and the supporting vouchers were not available. Appellant states, and his contention in this regard is supported by the witnesses, that shortly after the

seizure was made, the Munim arrived with the register. It is submitted that the officers, however, said that the office time was over and they recorded the receipt of the register on the following day. This is a vital claim which should have been fully dealt with by the Collector while passing his orders. He should have either accepted the claim to be factually correct or on the basis of available evidence, held that it was false.

He has done neither.

10. It is also observed that in the order-in-original, it is stated that from G.S. 13 register produced on 27-7-1982, the names and addresses of persons from whom the gold ornaments were received for repairs and manufacture could not be ascertained and that the party made many new entries subsequent to seizure. It is not at all clear as to how after the register had been seized by the department, any entries could have been made by the appellant. What is important is whether from whatever entries were available in the register, names and addresses of the concerned persons could be ascertained and if so, why necessary investigation was not undertaken by the department to verify whether the gold ornaments belonged to them or not. It is also seen that the customers were duly produced before the Additional Collector at the time of personal hearing. There is no finding of the Collector that the persons finally produced did not answer the names and addresses in the G.S. 13 register produced on or immediately after the seizure. If it were so, his conclusions could be more understandable.

11. I quite see the point made by the learned consultant that ornaments of M/s. Sohan Lal & Sons could not be confiscated without giving him due notice under Section 79. The Collector should have also given his finding as to why sale vouchers pre-authenticated by the departmental officers were considered by him to be not acceptable.

12. In view of the foregoing discussion, the order appealed against is set aside and remanded back to the Collector for de novo consideration of all facts and evidence and adjudication as per the process of law.