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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-14-1987

Reported in : (1987)(13)LC733Tri(Delhi)

Appellant : Vishnu NaraIn and ors.

Respondent : Collector of Central Excise and

Judgement :

1. First appeal has been filed by the Collector of Central Excise, Kanpur and the remaining two appeals have been filed by Shri Vishnu Narath. All the three appeals arise out of the same set of facts. Since common questions are involved in all the three appeals, a common order is being passed.

On 4.10.1974, the Central Excise Officers searched the residential-cum-business premises of S/Shri Kailash Chandra and Vishnu Narain, both residents of 51/2-A, Ram Ganj Mandi, Kanpur. They recovered from their residential premises gold, gold coins, gold mohars, gold of foreign origin and Indian currency as mentioned below :- All the aforesaid things were seized for contravention of Sections 8(1) and 16 of the Gold Control Act, 1968 (GCA), Section 11 of the Customs Act, 1962 (CA) and Section 13 of the Foreign Exchange Regulation Act, 1973 (PERA). Indian currency was seized as alleged sale proceeds of the contraband gold under Section 121 of C.A. Apart from the above, scrutiny of diary for 1955 recovered during the search revealed illegal purchase of gold and sovereigns for 1381 gms. valued at Rs. 25,598.37p.

A show cause notice was issued to both the persons namely, Kailash Chandra and Vishnu Narain. They were asked to show cause as to why the seized goods (gold) should not be confiscated under Section 71 and Section 111 of the GCA, 1968 and C.A. 1962 respectively and why penalty should not be imposed on them under Section 74 and Section 112 of the said Acts respectively. They were also asked to show cause why the seized Indian currency should not also be confiscated under Section 121 of the C.A., 1962.

After due process of adjudication, the learned adjudicating authority has confiscated under Section 71 of the GCA, 1968 the following items :- A penalty of Rs. 1000/- has also been imposed on Shri Vishnu Narain under Section 74 of the said Act.

Under another order dated 23.12.1978 under the Customs Act, the learned adjudicating authority, namely the Deputy Collector of Central Excise, Kanpur has confiscated the foreign gold piece weighing 72 gms. He has also imposed a penalty of Rs. 1500/- on Shri Vishnu Narain under Section 112(2) of the C.A.3. On two separate appeals under the two enactments the learned lower appellate authority, namely Collector of Customs (Appeals), New Delhi has confirmed the order-in-original under GCA except setting aside the confiscation of 5 mohurs and 2 Habib coins weighing 57.9 and 23.3 gms.

respectively. As regards the order under the C.A. the same was confirmed by the lower appellate authority.

4. In releasing the 5 Mohurs and 2 Habib Coins under the GCA, learned Collector of Customs (Appeals) has observed as under :- "I am not able to agree with the Assistant Collector's conclusion that Mohars and Habib Coins do not fall within the definition of 'article'; the goods are to be considered articles. This being a case, they would fall within the limits specified in Section for which declaration has to be made and hence their confiscation is not sustainable." In confiscating the 5 Mohurs and the two Habib coins the original authority had held as follows :- 'The Mohurs are primary gold not having been issued by a Sovereign Power. These are liable to confiscation for violation of Section 8 under Section 71. Habib Coins are also primary gold not having been issued by the Sovereign Power. Possession of

primary gold is barred under Section 8 of the Act and therefore, these Habib Coins are also liable to confiscation under Section 11 of the Act." 5. The appellant-Collector in the first appeal has appealed against the release of 5 Mohurs and 2 Habib coins. The learned appellant-Collector has stated in the ground of appeal after setting out definition of 'article', 'Coin' and 'Primary gold' under the GCA, as follows :- "There appears to be some confusion in the interpretation of definitions given for 'articles', 'coins' and 'primary gold'.

Primary gold in any form including circular slabs is not covered within the definition of 'articles' given under Section 2(b) of the Act. Habib Bank coins and Mohurs are circular slabs of primary gold and had never been a legal tender and cannot be categorised within the definition of 'coin' as defined under Section 2(e) of the Act, because these had never been issued by or on behalf of the Government or any other authority in exercise of its sovereign powers in order to be used for the time being, as money, whether such coin is a current coin or not. As a matter of fact these Habib Bank coins and Mohurs in circular slab forms are primary gold and were manufactured in the past by some Banks and Bullion Dealers like Habib Bank, Chemical Maneklal etc.

In trade parlance these coins are called "HABIB BANK KA SIKKA" or "MOHUR", guaranteeing their purity and weight as per markings thereon. They were being purchased and sold as primary gold in the past to cater the needs and requirements of the manufacture of gold ornaments or, for hoarding purposes. These are neither 'articles' nor 'coins' having been issued by a sovereign power or have any numismatic value. It has been further stated that if the contention of the Collector of Customs (Appeals), New Delhi is upheld then every piece of primary gold including the standard gold bars and foreign marked gold biscuits etc. being manufactured with markings by the foreign countries and Government of India mint will also fall within the definition of article whereas the primary gold, has specifically been excluded from the definition of 'article1 itself and the very purpose of the Act on possession of primary gold under Section 8 will be defeated." 6. Learned advocate for Shri Vishnu Narain, on the other hand, has urged that definition of "article' as given in the Gold Control Act means anything other than ornament and excludes the primary gold.Primary gold has been defined in the Act to mean "gold in any unfinished or semi-finished form and includes ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils, and wires." Learned advocate has stressed that gold Mohurs and the Habib coins are fully finished articles in any sense and would, therefore, be not covered by the general definition of primary gold which takes within its ambit only unfinished and semifinished form. He urges that these articles would also not be covered by the 'slabs' as is sought to be made out by the appellant-Collector. They are articles inasmuch as they are fully finished products and are meant for exchange on auspicious and festive occasions between the members of public and are known in the trade as articles. The very names, 'Mohurs' and 'Coins' indicate their trade names and common parlance. They are not known as slabs. He has also stressed that the specific forms spelt out in the definition of primary gold are actually unfinished or semi-finished forms of gold.They are essentially plain and have no designs or inscription on them.

He has further stressed that the slab is generally in the rectangular form whereas the articles in question are in circular form with designs and inscription on both sides.

7. Since there was a dispute between the contending parties regarding the shape and design of the articles in question, learned SDR was directed to get the gold produced for examination which was duly done so on the date of hearing i.e. 3.7.1987. On examination they are found to be circular in shape with inscription and designs on both sides.

8. I have carefully considered the pleas advanced on both sides. The real controversy is whether the gold Mohurs and the Habib coins are primaty gold or not. It is not the case of either party that they are coins as defined in GCA i.e. they have not been issued by any Government or any other authority in exercise of its sovereign power.

9. In order to appreciate the controversy, it is appropriate to set out the definitions of 'article' and 'primary gold1 as given in the GCA:- "2(b) - 'Article' means anything (other than ornaments), in a finished form, made of, manufactured from or containing gold, and includes - 10. The appellant-Collector has stressed that these

Mohurs. and Habib coins are nothing but circular slabs and are, therefore, covered by the definition of 'primary gold'. He has also stressed that they are known in the trade parlance as 'primary gold' but it is to be noted here that no evidence to that effect has been cited by the appellant-Collector.

Learned advocate for Shri Vishnu Narain has stressed that slab is generally a flat product of rectangular shape and the articles under consideration would not be covered by the term 'slab' mentioned in the definition of 'primary gold'. Neither side has, however, thrown light regarding the scope of expression 'slab' given in the definition of 'primary gold'. Both sides are making contrary assertions without any supporting evidence or authorities.

Looking into the New Webster's Dictionary of the English Language (Deluxe Encyclopaedia Edition), I observe that slab means as follows:- "Slab-A board, flat, somewhat thick piece of stone, wood, or other solid material; a thick slice of anything; as a slab of meat; a rough outside piece cut from a log, as in sawing it into boards; baseball slang, the pitcher's mound. A section or piece of concrete pavement-v.t.-slabbed, slabbing. To make into a slab or slabs; to cover or lay with slabs; to cut the slabs or outside pieces from, as a log." Shape is not material. It can be of any shape. It is of a crude (rough) form. It is made of solid material. It was apparent from examination of the goods that both Mohurs and Habib coins are in fully finished form with designs and/or inscription on both sides. They are not pieces of gold of crude or semi-finished or unfinished forms. Accordingly, these cannot be treated as slabs.

I further observe that Customs Tariff also makes a distinction between 'unwrought or semi-manufactured1 forms of 'gold' and the 'coins' (reference headings 71.08 and 71.18 of Customs Tariff). Coins have been further sub-divided into two headings as follows :- '7118.10-Coin (other than gold coin, not being legal tender).

711S.9(J-Other." The aforesaid two headings- separately for 'gold-unwrought or in semimanufactured forms' on the one hand (and) 'coins' on the other hand indicate that in commercial parlance coins are different from 'gold, unwrought or semi-manufactured'; latter expression is akin to the expression 'unfinished or semi-finished form' occurring in the definition of primary gold in GCA.Explanatory notes pertaining to 'Coin' against heading 71.18 of the Harmonised Commodity Description and Coding System indicates the method of manufacturing of coins as follows :- "Coins are made by stamping blanks from sheet metal; these are then struck with the appropriate dies to produce simultaneously the designs on the two faces." The aforesaid material indicates clearly that coins - whether legal tender or not - are a separate commodity by themselves, and are in fully finished form. They would not be covered by the definition of 'primary gold' as given in the GCA. That coins, whether they are legal tender or not, are different from the primary gold is also brought out from the definition of 'gold' in the FERA, 1973. The said Act defines 'gold1 as including gold "in the form of coin, whether legal tender or not, or in the form of bullion or ingot, whether refined or not and jewellery or articles wholly or mainly of gold".

In view of the foregoing discussion, therefore, I hold that Mohurs and Habib coins would be covered by the definition of. 'article1 in the GCA which-is of a residuary character. In other words, it covers everything of gold which is neither ornament nor primary gold. As discussed above, the articles under consideration are not primary gold. Nor are they obviously ornaments. They are, therefore, to be held as articles. In this view, learned lower appellate authority's order in releasing Habib Coins and Mohurs" is correct on facts and in law.

11. Appellant-Collector has further expressed apprehension that if the view of the Collector (Appeals) is upheld then every piece of gold including standard gold bars and foreign marked gold biscuits etc.

being manufactured, with markings by the foriegn countries and Government of India mint will also fall within the definition of 'article' whereas the primary gold has specifically been excluded from the definition of 'article' itself and the very purpose of the Act on possession of primary gold under Section 8 would be defeated. Firstly, the apprehension of the appellant-Collector' is not quite correct.

Standard gold bars and foreign marked gold biscuits are definitely covered by the shape of 'bars' spelt out within the definition of primary article and therefore, they would continue to be excluded from the definition of 'article' under the GCA. Secondly, interpretation of law cannot be based on the apprehension of individual officers. If there is a lacuna in the law it is for the legislature to remove that lacuna. Coins and Mohurs have been held to be article because they are fully finished in form; they are not covered by any of the specific shapes mentioned in the definition of primary gold and lastly they are not known in the trade parlance as primary gold on the basis of the foregoing authorities, namely prevalent Customs Tariff and the Explanatory notes thereto.

12. Another point made by the appellant-Collector that the lower appellate authority has gone wrong in releasing the Mohurs and coins to Shri Vishnu Narain inasmuch as Shri Vishnu Narain had claimed that the four Mohurs belonged to his unmarried son and two. Habib coins to another son Shri Gopal. This plea of the appellant-Qollector is also not acceptable on the ground that the adjudicating authority had not accepted the pleas of Shri Vishnu Narain and had impliedly accepted him as the owner of these four Mohurs and two Habib coins. In the circumstances, release to Shri Vishnu Narain of four Mohurs and two Habib coins is hereby ordered. As regards one Mohur it was claimed to belong to Shri Kailash Chandra. Ownership of one Mohur has also been accepted by the lower adjudicating authority. However, it appears that Shri Kailash Chandra had not come in appeal before the lower appellate authority, nor is he in appeal before this Tribunal; therefore, one Mohur as claimed by Shri Kailash Chandra would remain confiscated.

13. As regards the appeal filed by Shri Vishnu Narain, the learned Advocate appearing for him has urged that the 4 pieces of Rawa gold is clearly out of melted gold ornaments and were meant to be given in the shape of ornaments to the daughters of his client. I observe that this has been the consistent stand before the lower authorities.

Accordingly, while upholding confiscation of the primary Rawa gold, since possession of primary gold is prohibited under Section & of the GCA, I give to the owner an option to get 4 pcs. Rawa gold released on payment of a fine of Rs. 500/-. I do not, however, find any reason to interfere with any other part of the impugned order under the GCA which is otherwise confirmed.

14. As regards the appeal against the impugned order passed under the CA foreign marked gold stands already confiscated under the GCA. Onus to prove that the foreign marked gold recovered from the premises of the appellant is not smuggled, lies on the appellant in terms of Section 123 of the CA. This onus has not been discharged. Appeal memorandum in this regard merely makes a conjecture that the gold was possibly lying for a long time in use, therefore, it has been urged that absolute confiscation is not called for and may be released on a redemption fine. I am unable to agree with this plea of the appellant.

It cannot be believed that the gold in question was not within the knowledge of the appellant. In my case, mere possession of the foreign marked gold attracts penal liability in terms of Section 112 of the CA.The fact that the foreign marked gold was recovered from the locker of steel almirah alongwith 4 pcs. of Rawa gold (which has been confiscated as held above) which have been fully owned by the appellant goes to show that the appellant must be having knowledge about the foreign marked gold as well. In these circumstances, absolute confiscation of foreign marked gold and penalty on the appellant is justified as maintained in the impugned order. I, therefore, confirm the impugned order passed under the C.A.

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