

**Shri Jiwan Lal Vs. Collector of Customs and C.E.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** May-28-1983

**Reported in :** (1983)LC1352Tri(Delhi)

**Judge :** M G Murthy, R T I.J.

**Appellant :** Shri Jiwan Lal

**Respondent :** Collector of Customs and C.E.

**Judgement :**

1. This is a revision application (hereinafter called "appeal" filed before the Central Government which under Section 131B of the Customs Act, 1962, stands transferred to this Tribunal to be disposed of as if it were an appeal before the Tribunal.

2. This appeal is against the captioned orders of the Collector in which he ordered the confiscation of a primary gold bar weighing 72.850 gms and, as recorded }n the Order, valued at Rs 5820, and imposition of a penalty of Rs. 50,000 under Section 74 of the Gold (Control) Act.

3. Briefly stated, the facts are that Central Excise preventive staff, Ludhiana, visited the appellant's business premises at Jagraon and checked the accounts on 27.2.1979. Certain irregularities were noticed and in addition one bar of primary gold weighing 72.850 gms of 22 carat purity was seized along with some registers etc. One of these was an account book on which the Department relied. On

7.7.1980 the Counsel for the Appellants wrote to the Collector that Sub-sections (2) and (3) of Section 66 of the gold. (Control) Act envisage that wheresoever the period of retention of documents was proposed to be extended, the person concerned should be given notice to that effect and he can file his objections if he so chooses. In this letter the Counsel further contended that no such approval has been granted by the competent authority and the documents, therefore could not be retained as the period of the six months from the date of seizure had expired. They cited judgment in a Civil Writ Petition No. 2379/70 Bhagwat Prasad v.U.O.I. (Punjab & Haryana High Court) The Counsel requested for the return of seized documents and dropping of the proceedings initiated on the basis of show-cause notice issued on 1.8.79, in so far as the case related to the entries contained in the seized documents. After hearing the appellant's Counsel on 7.7.80 the Collector informed the appellant's Counsel under a letter dated 5.8.80 that while the request for the return of the documents was still under consideration the Assistant Director of Inspection (I. T.), Ludhiana, issued summons under Section 131 of the Income Tax Act, 1961 requiring the Asstt.

Collector, Central Excise, Ludhiana, to produce the seized documents before him on 7.8.1980 and accordingly, these documents were produced before the Income Tax authorities. Further personal hearing was given on 3.9.80 while some witnesses were cross-examined and again on 18.9.1980 and 22.10.80 and 31.10.1980. On the last two dates, one Shri Vidya Sagar was to be examined but meanwhile, the Appellant had filed a Misc. Writ Petition No. 3221 of 1980 in the High Court of Punjab & Haryana whereupon the Hon. High Court ordered that the adjudication proceedings can go on but the final order may not be passed till the final disposal of the petition. Ultimately some time before 16.1.81 the Hon. High Court of Punjab and Haryana dismissed the appellant's writ petition as premature and the Collector proceeded with the personal hearing on further dates. During the proceedings, the appellant inter alia submitted that the notebook could not have been relied upon in view of the provisions of Section 66 (2) and (3) of the Gold (Control) Act. The Appellant also claimed that 72.800 gms of gold belonged to one Shri Mukand Lal Munim of Jagraon and was not liable to confiscation.

4. The Collector after considering all the arguments observed that on admitted facts one bar of primary gold weighing 72.850 gms. was seized on 27.2.79 and was not accounted for by the appellant in his G. Section 13 register. Therefore, he held that the charge of contravention of Section 55 of the Gold (Control) Act was established against Shri Jiwan Lal. He further held that the primary gold in question not being accounted for in the G.S. 13 register of the appellant, the onus was on him to establish that the gold has been acquired by him in accordance with the provisions of Section 41 (a) of the Gold (Control) Act, 1968.

The Collector relied on the statement given on 27.2.79, immediately after seizure, by the Appellant, wherein he expressed his inability to give the source of acquisition of the said bar of primary gold or to connect it to any customer. The Collector noted that the Appellant did not reveal the source even in the interim reply dated 12.8.79 to the show-cause notice and the opportunity given to the appellant to produce the defence witnesses, if any, on 17.1.81 was not availed of. He pointed out that for the first time in a letter dated 20.1.81, sent on behalf of the appellant, it was contended that the gold weighing 72.800 gms belonged to one Shri Mukhand Lal Munim of Jagraon. He, therefore, dismissed the claim as an after-thought and held that the claim of the defence was not substantiated. He, therefore, held that Section 41 (b) of the Gold (Control) Act was contravened and the primary gold bar under seizure was liable to confiscation and that Shri Jiwan Lal was liable to penal action. Relying on the seized note book, he held that Shri Jiwan Lal dealt with in gold and imposed a penalty of Rs. 50,000 for contravention of Section 27, 41 (b) and 55 of the Gold (Control) Act, which were to have been established.

(a) The seized gold bar belonged to Shri Mukand Lal and could not have been confiscated without notice to him in terms of Section 71 of the Act; (b) The seven witnesses examined for the Revenue having turned hostile and gone back on their earlier statement for good and sufficient reasons, their evidence cannot be relied upon; (c) The relevant entries in the seized book had not been put to them or the Appellant at any stage and not having been given any opportunity to explain the same cannot be relied upon; (d) The note book having been retained beyond the statutory limit of six months without the Gold Control Administrator's permission in

terms of Section 66 (2) and (3) of the Act, became inadmissible in evidence and otherwise lost all probative value; more so, when, admittedly, the book was not in the handwriting of the Appellant; in this context, Counsel relied upon (I. T. (e) The chart enclosed with the Show Cause notice was admittedly a summary of the entries in the book. It is of the nature of secondary evidence Even so, it was unattested, not put to the Appellant, and there is no way to vouchsafe the correctness thereof; (f) The entire adjudication proceeded on surmises and unwarranted inferences; (g) At the worst, the only violation of the Act committed by the Appellant was his failure to enter the seized gold bar in his G.S. 13 register and a penalty of Rs. 50,000/- was totally out of proportion to the offence.

6. Opposing the arguments on behalf of the Department, Shri Yuvraj Gupta submitted that the appellant did not mention the origin of the gold or particulars of the customers in his initial statement or even soon thereafter. He submitted that the appellant was permitted to examine records and to take copies and that the chart enclosed with the show-cause notice was a summary of the entries in the note book and pointed that the appellant, in his original statement admitted that some entries were made in G. Section 13 register as mentioned in the show-cause notice. He further submitted that the word 'Maal' occurring in the note book interpreted in the context could only mean gold and further submitted that the appellant never denied that he had made entries in the register and actually admitted it. From this, accordingly to the learned Departmental Representative, it could be inferred that the entries were made in the appellant's handwriting.

With regard to the result of cross-examination, he submitted that the witnesses substantially reiterated their evidence and it remained that the transactions were not entered in G.S. 13. On a question from us he admitted that the appellant was not confronted with any entry from the note book.

7. We have considered the submissions made by both the sides. The questions that arise for decision are : (1) Whether the primary gold weighing 72.850 gms and seized on 27.2.79 is liable to confiscation; (3) If so, whether the penalty of Rs. 50,000/- imposed is justified or would warrant any reduction.

8. It would appear on consideration of all the material on record and the submissions made before us that: (i) primary gold weighing 72.850 gms was seized from the Appellant's premises. It was unaccounted for; (ii) the Appellant was unable to give the name and other particulars of the owner thereof in his statement immediately on seizure on 27.2.79 or soon thereafter, nor in the reply to the Show Cause notice. It was not till 20.1.79 that he came out with the name of the owner; (iii) the so called owner, discovered after nearly a year after the seizure does absolutely nothing to claim the gold: (b) in the premises, there is no doubt that the story of ownership of the gold by a person other than the Appellant was a belated after-thought and there is no contravention of the provisions in Section 71 or 73 in the confiscation thereof: (c) Obviously, there has been a contravention of Section 55 of the Act J in so far as, the appellant had failed to enter the gold bar in question in his G. Section 13 register and the learned Counsel had to concede this; (d) the aforesaid contravention attracted imposition of a penalty] in terms of Section 74 of the Act; (e) in imposing of penalty in a sum of Rs. 50,000/- on the Appellant, the Collector would appear to be in error in so far as he relied upon the entries in the seized book to compute the volume of illicit business transacted by the Appellant for the levy of a penalty: entries not put to the appellant or the witness who turned hostile; (f) without going into the merits of the contention of the learned Counsel for the Appellant that the book in question was either inadmissible in evidence or has lost its probative value for contravention of the provisions in Section 66 of the Act, we hold that the book has to be excluded from consideration altogether for the aforesaid reason; (g) that leaves us only with the infringement of Sec, 55 in respect of the seized bar of primary gold and a penalty of Rs. 50,000/- for the said contravention is far too high by any reckoning.

9. In the result, we partly allow the Appeal and reduce the penalty} to Rs. 15,000/- only. The confiscation of the gold bar is confirmed. |

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