Collector of Central Excise Vs. Prem Lal

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-26-1987

Reported in : (1987)(13)LC1095Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Prem Lal

Judgement :
1. Brief facts of the case are that the respondent herein was holding a gold dealer licence. He applied for the renewal of the licence for the year 1977. His licence was not renewed by the Assistant Collector of Central Excise, Amritsar on the ground that the respondent's turnover with the persons other than licensed dealers during the preceding 12 months was less than 600 gms. Therefore, his turnover was termed to be low and their respondent was not considered as fulfilling the condition laid down under Rule 3(ee) of Gold Control (Licensing of Dealers) Rules, 1969. It has also been held that the respondent has not declared himself as wholesale dealer in the G.S.6 application submitted by him for renewal of the gold dealers licence.

2. On appeal to the Collector of Customs (Appeals), New Delhi, it was urged by the respondent before that authority that he was fully engaged in manufacturing gold ornaments for other dealers during the relevant period to the tune of 21,261.450 gms. As such, he did not make ornaments for other customers. Yet he manufactured substantial quantity for the dealers', therefore, renewal should not have been denied inasmuch as the definition of the term 'dealer' included in its

ambit a person who carried on making, manufacturing, repairing, buying and selling etc. and not only a person who just sells & buys gold and gold ornaments. Set against this definition the respondent's turnover, it was pleaded before the lower authority, was substantial, warranting renewal of the licence. The learned lower appellate authority accepted the above plea of the respondent herein. The turnover was, therefore, held for the purpose of Rule 3(ee) to include the manufacture made for or on behalf of other dealers. On this basis the respondent's appeal was allowed by the lower appellate authority.

3. The department has now come in appeal against the aforesaid order of the lower appellate authority. The appellant-Collector has stated that the impugned order is manifestly wrong inasmuch as turnover for the purpose of renewal of licence of the gold dealer in terms of Rule 3(ee) would include the manufacture made for and on behalf of other dealers.

The lower appellate authority, according to the appellant, has totally overlooked the provisions of the said Rule which reads "that the applicant has been a wholesale dealer in standard gold bars, articles or ornaments or the turnover of the applicant with persons other than licensed dealers during the preceding 12 months ending 31st October was not too low." From this definition it is urged that the turnover to be reckoned has to be with the persons other than licensed dealers. It has also been urged that the term 'dealer' as defined in the Gold Control Act (GCA) is of no relevance or bearing so far as the provisions of the Gold Control (Licensing of Dealers) Rules, 1969 are concerned which prescribes specific conditions regulating the grant/renewal of gold dealers licence.

4. The respondent in response to notice for hearing has requested for decision of the case on merits on the basis of grounds taken before the Appellate Collector.

5. Learned SDR, on the other hand, has reiterated the aforesaid grounds set out in the appeal memorandum.

6. We have carefully considered the pleas advanced on both sides. We observe that the term 'wholesale dealer' used in Rule 3(ee) of the aforesaid Rules has not been defined, although the term 'dealer' has been defined in the GCA under

Section 2(h). We are unable to accept the plea of the appellant-Collector that the definition of 'dealer' given under Section 2(h) of the GCA cannot be made applicable to the expression 'dealer' occurring in the expression 'wholesale dealer' used in Rule 3(ee) aforesaid. The aforesaid rules have been made under Section 114 read with Sub-section (6) of Section 27 of the GCA.Therefore, unless an expression has been specifically defined in the Rules themselves, any expression used in the Rules would have to be construed in the context of definition of such expression provided in the parent Act. We find that a similar view has been taken by the West Regional Bench in the case of Collector of Central Excise, Nagpur v.Balarpur Industries Ltd., Chanderpur [1983 (13) ELT 1263] which states as follows :- "We further accept the learned advocate's contention that the term 'manufacture' in Notification No. 201/79, dated 4-6-1979 has to be interpreted on the basis of its definition in the parent Statute." Though ordinarily the word 'wholesale dealer' would imply a person who buys and sells in wholesale lots with other dealers; yet in the context of definition of dealer under Section 2(h) of the GCA the expression 'wholesale dealer' would also include a person who, inter alia, makes or manufactures gold ornaments for other dealers. From this stand point the respondent can be considered to be a wholesale dealer inasmuch he had been making ornaments in wholesale lots for other dealers - a plea taken before the lower appellate authority by the respondent herein and not rebutted or controverted by the appellant-Collector in his appeal memorandum. On this ground itself, the licence has been rightly ordered to be renewed by the lower appellate authority.

7. We further observe that even in respect of the alternative condition provided in Rule 3(ee) of the said Rules Explanation 1 thereto has defined the term "turnover" for the purpose of the said Rule. This explanation further lays down that the turnover of not more than 50 gms. per month in the preceding 12 months may not be considered too low if there are sufficient reasons for an average monthly turnover of lower than 50 gms. It is apparent that the respondent had been manufacturing ornaments for other dealers and therefore, his turnover with persons other than licensed dealers was nil. It is not as if the respondent was not doing any significant business in gold for the purpose of which this condition in Rule 3(ee) appears to have been laid down before renewing the licence. It can,

therefore, be stated that the respondent's turnover with persons other than licensed dealers was nil on account of sufficient reasons. The alternate condition laid down in Rule 3(ee) can also be said to have been fulfilled in the case of the respondent.