

Commissioner of Customs Vs. Pushpawati Nagar

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-25-2005

Reported in : (2006)(193)ELT116TriDel

Judge : S Kang, Vice-

Appellant : Commissioner of Customs

Respondent : Pushpawati Nagar

Judgement :

2. The Revenue filed this appeal against order-in-appeal passed by the Commissioner (Appeals). The brief facts of the case are that in the year 1988 the Income Tax department searched the premises of the respondent and certain gold coins and pendants were recovered during the search. The gold was recovered by the Income Tax department in 1993 and also informed the Customs department. The Customs department seized the gold and issued a show-cause notice on the ground that the gold in question is smuggled in nature as having the foreign origin. The adjudicating authority confiscated the gold on the ground that the respondents have failed to produce any evidence regarding possession of the foreign marked gold and also imposed a penalty of Rs. 20,000/-. The respondents filed appeal and Commissioner (Appeals) set aside the impugned order and allowed the appeal.

3. The contention of the Revenue is that the respondents have illegally acquired and possessed contraband goods and had failed to produce evidence to substantiate legal acquisition of the seized gold. The contention of the Revenue is

that the respondents in the statement specifically mentioned that the gold was received by her from father and mother-in-law but could not produce any evidence regarding receipt of the gold received from her mother and father-in-law. In these circumstances the Revenue contended that the impugned order is liable to be set aside.

4. The contention of the respondent is that gold in question was received from father and mother-in-law which was given to the respondent at various occasions and mere foreign markings on gold alone is not conclusive proof to establish smuggled nature of seized goods.

The respondents relied upon the decision of the Tribunal in the case of Gunwant Lal Godawat v. Collector of Customs 5. In the case the gold was seized in the year 1988 by the Income Tax department which was subsequently released in the year 1993. The Revenue seized the gold and on receipt of an information from the Income Tax department on the ground that it was having foreign markings hence is smuggled in nature.

6. From the very beginning the stand of the respondent is that the gold in question is received by her from father and mother-in-law on various occasions. It is also come on record that the father of the respondent were under the Holker Rulers and the gold was given to her father by the Holker Rulers from time to time as reward from his services, this fact was not rebutted by the revenue. In these circumstances, I find no infirmity in the impugned order. The appeal is dismissed.

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