

**Shri Shashi Kumar and Shri Vs. Cc**

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

**Decided On :** May-05-2005

**Judge :** P Bajaj

**Appellant :** Shri Shashi Kumar and Shri

**Respondent :** Cc

**Judgement :**

1. In both these appeal, the appellants have contested the correctness of the impugned order vide which the Commissioner (Appeals) has affirmed the order-in-original of the adjudicating authority regarding confiscation of the foreign origin gold, Indian origin remolten gold as well as ornaments, motor cycle and imposition of personal penalties on the appellants, as detailed therein.

2. I have heard both sides and gone through the records. The facts are not much in dispute. On 28.2.2001, both the appellants were intercepted along with the motorcycle by the Officers. From their personal search, foreign origin gold biscuits and small pieces thereof weighing 827.110 gms in all were recovered. The Indian original re-molten gold as well as gold ornaments weighing 87.520 gms were also recovered from them.

The recovery of these goods had not been disputed by the appellants, but there could not be absolute confiscation of these goods as had been ordered by the authorities below. Even foreign origin gold biscuits could not be ordered to be absolutely confiscated being not restricted goods as the import of the foreign origin

gold biscuits/jewellery had been allowed by the "Government. Therefore, the impugned order in this regard deserves to be modified and the appellants are allowed to get the goods redeemed on payment of redemption fine of Rs. 20,000/-.

3. However, the Indian origin re-molten gold and the gold ornaments could not be legally confiscated as the possession of the same is not prohibited under any provision of law. Mere non-accountability of the same did not attract the provisions of Section 110 of the Act.

Therefore, the impugned order regarding the absolute confiscation of these goods is set aside.

4. The confiscation of the motorcycle which was with the appellants at that time, in my view, has been wrongly ordered as the motorcycle belonged to another person, Shri Amit Kumar, to whom no notice had been give before ordering the confiscation. Therefore, the impugned order in this regard is set aside.

5. Keeping in view the facts and circumstances of the case, the personal penalties on both the appellants are also reduced to Rs. 10,000/- (rupees ten thousand only) each. The impugned order accordingly stands modified. The appeals of the appellants stands disposed of in the above terms with consequential relief, as per law.

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