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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-28-2005

Reported in : (2006)(193)ELT40TriDel

Judge : P Bajaj

Appellant : Pankaj Kumar Dagaria

Respondent : Commissioner of Customs

Judgement :

1. These appeals have been directed against the common impugned order-in-appeal vide which the Commissioner (Appeals) has confirmed the confiscation of the seized gold bars and pieces and also the imposition of penalties on the appellants as detailed therein.

3. On Pankaj Kumar, penalty of rupees 50,000/- has been confirmed while on Jayanti Lal of rupees 5,000/-, on Vinod Kumar penalty of rupees 25,000/- and on Ashok Kumar rupees 10,000/- has been confirmed. The penalties on these appellants, had been confirmed on account of seizure of 10 gold bars and 4 pieces of gold of foreign origin on 13-1-1999 from the business premises of M/s. Vardhaman Abhushan, Udaipur, which is the proprietary concern of Vinod Degoria, appellant and manager of which was Pankaj Kumar, at the time, and both of them are brothers.

Penalty on Jayanti Lal, father of these appellants had been confirmed as he was also involved in the smuggling of seized goods. Ashok Kumar was, at that time, servant with Vinod Kumar and was also servant with another firm M/s. Vardhaman Jewellers at Ahmedabad of which Pankaj Kumar, appellant, at that time, was proprietor and the manager was Vinod Kumar.

4. From the record, it is also evident that the seizure of the gold bars, was initially made by the Income-tax authorities by carrying out the survey of the premises of M/s. Vardhaman Abhushan, Udaipur on 12-1-1999. But Pankaj Kumar, appellant, produced a fax copy of the bill no. 711, dated 11-9-1999 vide which the seized gold bars were purchased from the manager of the firm, M/s. Gayatri Jewellers, Ahmedabad. The proprietor of that firm, Shri Dipesh Soni admitted the sale of the gold bars to the firm Vardhaman Abhushan, Udaipur, the proprietary concern of Vinod Kumar and managed by Pankaj Kumar, appellant. He had also produced copies of entries of the purchase and sale register. The plea of the Revenue that the bill did not relate to the seized gold bars, cannot be accepted, especially when the sale of the same had been admitted by Dipesh Soni, to the above said firm. Therefore, the lawful acquisition of the seized gold bars and pieces by the firm, M/s.

Vardhaman Abhushan, Udaipur, stands amply proved.

5. Jayanti Lal, appellant, had been penalised for possession of 10 gold bars of foreign origin, which were delivered to him by Mukesh Kumar for preparing the ornaments. But Mukesh Kumar, himself in his statements, one recorded on 22-2-1999 and another on 23-2-1999, admitted of having delivered 10 gold bars to Jayanti Lal, for preparation of ornaments. It is only in the third statement recorded on 24-9-1999, he allegedly denied this fact, but that statement was recorded when he was in the custody of the Customs Office. He was never produced for cross-examination when asked for by the appellants. Those gold bars were handed over by Jayanti Lal to Lokesh Kumar, goldsmith for preparing ornaments for Mukesh Kumar who was also interrogated and who retracted his statement regarding non-receipt of gold bars for preparing ornaments from Jayanti Lal, for having obtained under duress/coercion. Even his statement was not recorded by any competent

officer and as such could not be taken note of. He was also not produced for cross-examination when asked for by the appellants. Mukesh Kumar had produced the evidence regarding import of the seized gold bars under a package receipt and the genuineness of which had not been doubted. Therefore, he had a lawful possession of the gold bars which were delivered by him to Jayanti Lal, appellant for preparation of ornaments, from the goldsmith.

6. In the light of discussion made, above, the impugned order regarding confiscation of the seized goods and imposition of penalties on the appellants, as detailed therein, cannot be sustained and is set aside.

The appeals of the appellants are allowed with consequential relief as per law.

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