Shri Raj Kumar Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-02-1988

Reported in : (1989)(21)LC87Tri(Delhi)

Judge : G Agarwal, J T P.C.

Appellant : Shri Raj Kumar

Respondent : Collector of Central Excise

Judgement :

On 20.4.1982, the Central Excise Preventive party conducted the search of shop and residential premises of appellant herein. As a result of search ornaments weighing 17.350 gms. were recovered from the shop and gold in primary form weighing 28.600 gms. was recovered from the residential premises in the presence of independent witnesses. The gold raini recovered from the residential premises was found concealed in a sewing machine whereas ornaments recovered from the shop were packed in a Dabbi lying in the counter. The primary gold and ornaments were seized by the officer on the reasonable belief, in the absence of non-possession of gold dealer's licence or gold smith certificate or any other lawful evidence for possession thereof that they were liable to be confiscated under Section 71 of Gold (Control) Act, 1968 (hereinafter refer to as the Act). The appellant herein also admitted the recovery of primary gold and ornaments in his written statement in the presence of witnesses.

A show-cause notice dated 10.9.1982 was issued to the appellants for contravention of provision of Sections, 8, 11, 27 & 39 of the Act as to why the seized gold and ornaments should not be confiscated under Section 71 of the Act and as to why penalty should not be imposed upon him under Section 74 ibid.

2. On adjudication by the Assistant Collector contravention of Section 8, Sections 27 and 39 of the Act was upheld and accordingly the ornaments and primary gold were confiscated absolutely. Penalty of Rs. 2,500/- was also imposed on the appellant for contravention of the aforesaid provision.

3. The Collector of Customs (Appeals), Delhi in appeal filed before him by the appellant upheld the confiscation of the ornaments. He, however, gave an option to the appellant to redeem the gold and ornaments on payment of a fine of Rs. 2,500/-. He also reduced the penalty from Rs. 2.500/- to Rs. 1.000/- only.

4. The learned consultant for the appellant has now urged that the charge of contravention of Section 11 i.e. of the prohibition regarding making, manufacture etc. of the primary gold, articles and ornaments or any other thing containing gold has been dropped by the original authority. Contravention of Section 8 has been upheld on the ground that a piece of primary gold has been found from his residential premises. The learned consultant, however, states that the purity of this primary gold was less than 9. This piece of primary gold according to him was received from one certified gold smith, Shri Charanjit Singh of Krukshetra who had been given old ornaments by the appellant for making new ornaments. Out of melted old ornament the said certified gold smith Shri Charanjit Singh had made new ornaments weighing 17.350 gms. alleged to have been recovered from the shop and remaining 28.600 gms. were returned by the said gold smith on the ground that the purity was too low and, therefore, ornaments cannot be made out of that. On the direction of the Tribunal purity of the primary gold had been assayed/tested by a government approved valuer for jewellery. A copy of the certificate dated 5.7.1988 has been sent by the Central Excise Collectorate, New Delhi vide their letter dated 18.7.1988 addressed to the Assistant Registrar (NRB), CEGAT. The certificate indicates that the purity of the primary gold recovered from the appellant is 7 to 8 carats only. Therefore, in view of the definition of gold in

Section 2(j) of the Act this cannot be treated as gold at all. Accordingly, possession thereof is not prohibited in terms of Section 8(1) of the Act. The primary gold piece is not liable to be confiscated under the Act. It is, therefore, released unconditionally.

5. Regarding contravention of Sections 27 & 39 i.e. non-possession of gold dealer licence or gold smith certificate by the appellant herein, the learned consultant states that the charge of contravention of Section 11 against the appellant has already been dropped ; in other words it has been held by the lower authorities that the appellant does not make, manufacture, prepare, process any primary gold, or make, manufacture, prepare, repair, polish or process any ornament or make, manufacture, prepare, repair, polish or process any article or make, manufacture, or prepare anything containing gold of any purity. Section 40 of the Act describes that a certified gold-smith may make, manufacture, prepare, repair, polish or process ornaments and may also repair or polish article. None of these activities, therefore, can be said to have been carried out by the appellant in view of dropping of the charge of contravention of Section 11 of the Act. Accordingly, the learned consultant submits that the appellant cannot be said to have carried out a business of gold smith. There is no other evidence whatsoever on record. Hence, charge of contravention of Section 39 of the Act does not survive Similarly, the learned consultant submits that there is no evidence whatsoever except the alleged recovery of ornaments from the shop that the appellant was carrying on in any manner business of buying or selling etc of the gold ornaments. In the absence of such evidence, even if a recovery of ornaments from a Dabbi lying in the sale-counter is assumed to be correct charge of carrying on business of gold dealer without licence cannot be sustained. The learned SDR on the other hand reiterates findings of the lower authorities.

6. We have carefully considered the pleas advanced on both sides in respect of charge of contravention of Sections 27 and 39 of the Act by the appellant. We are inclined to agree with the appellant's learned consultant that except the statement of the appellant there is no other evidence on record to corroborate the fact that the appellant was carrying on a business] either as gold smith or as gold dealer. On the other hand giving of old ornaments by the appellant to Shri Charanjit Singh,

a certified gold smith for the purpose of making new ornaments and returning thereof in the form of a raini and new gold ornament is not disputed by the lower authorities. We, therefore, agree with the learned consultant for the appellant that so-called primary gold and gold ornaments were the products of old. ornaments of the appellant and no offence of contravention of Sections 27 and 39 can be said to have been committed by the appellant herein. We uphold accordingly.

7. In view of our findings and discussion above, we allow the appeal and set aside the impugned order with consequential relief to the appellant.