J.K. Devi and Sons Vs. Gold Control Administrator

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-20-1983

Reported in : (1983)LC2081DTri(Mum.)bai

Judge : D T K.S., H Chander

Appellant : J.K. Devi and Sons

Respondent : Gold Control Administrator

Judgement :

1. M/s. J.K. Devi & Sons, 13, Sadashiv Peth, at Post Satara, Maharashtra has filed an appeal against the consolidated order No.S/49-43/82 GC and S/49-44/82 GC (Satara) dated 11th day of November, 1982 passed by the Collector of Customs (Appeals), Bombay confirming the order F. No. XVII (GO84/82/ 3675 dated the 17th June 1982, passed by the Assistant Collector of Central Excise & Customs, Satara.

2. Briefly, the facts of the case are that on the basis of an information received, Supdt. Central Excise, Preventive, Satara Division visited the shop of Shri Hindurao Ganpatrao Pawar, Certified goldsmith No. 13/77 of Satara in the afternoon of 7.1.1982 and had found in the shop apart from Shri Hindurao Ganpatrao Pawar his brother Shri Shamrao G. Pawar and one person Shri Sadashiv Y. Ghodke was also present. It was found that something was melted in the furnace of the shop and when Hindurao G. Pawar was asked as to what was being melted, he told that it was gold which belonged to Shri Sadashiv Y. Ghodke.

On enquiry by the Supdt, with Shri Sadashiv Ghodke, he told that the gold which was being melted belonged to him and he had brought six gold bangles of his wife for melting and preparing a gold bar for drawing wire and pasta for making new bangles and patlies for his wife. Shri Ghodke told that he did' not possess any Gold dealer's licence or a Goldsmith's Certificate. Since no person can make, manufacture, prepare or process any primary gold otherwise than as provided under the Gold Control Act, 1968 and since no entry of the said gold was forthcoming in the G.S. 13 register of Shri Hindurao G. Pawar, Supdt. Central Excise had effected seizure of the primary gold alleged to have, been prepared by melting the gold bangles of Shri Ghodke under the reasonable belief that the provisions of Gold Control Act, 1968 were contravened by Shri Hindurao G. Pawar and Sadashiv S. Ghodke in respect of the said gold. At the time of panchanama the gold bar was weighed and was found to weigh 92.500 gms, with purity of 23 carats and valued at Rs. 14,800/-. The said gold weighing 92.500 grams was seized. During the course of investigation on 7.1.82, the statements of Shri Hindurao Ganpatrao Pawar and Sadashiv Y. Ghodke were recorded. Both of them admitted the offence under Gold Control Act and Mr. Ghodke stated that he had brought the gold bangles of his wife for melting and he got them melted with Shri Hindurao Pawar and prepared a gold bar for drawing wire and pasta for preparing new bangles and patlies. Shri Hindurao G.Pawar corroborated the statement of Shri Sadashiv Ghodke. Statement of Smt. Padmawati S. Ghodke, wife of Shri Sadashiv Ghodke was also recorded on the same date. In her statement she had stated that her husband had taken her six bangles for melting and was preparing primary gold for making new bangles. M/s. J.K. Devi & Sons had issued a notice to the Asstt. Collector of Central Excise, Satara division that the gold under seizure was out of their stock-in-trade and had belonged to Mrs. Manukabai Jijabai Jadhav of Goa (Limb) and she had given them her old ornaments for remaking new ornaments. Out of these ornaments, they had given some old ornaments weighing 92.670 grams to Shri Mahadeo Yeshwant Ghodke, Certified Goldsmith under Voucher No. 537 dated 7.1.82 in the morning of 7.1.82 and that Shri Mahadeo Ghodke had given the gold bar made out of the said old ornaments to his brother Shri Sadashiv Ghodke for drawing pasta in the afternoon of 7.1.82 as he himself was sick. They had further stated that the said gold was lying in the pasta machine for drawing pasta and the plate made out of the gold bar broke into pieces and so instead of carrying back the said pieces to his brother Shri Mahadeo Ghodke for melting and remaking, he gave some pieces to Shri Hindurao Pawar for melting in his shop and when the pieces were, being melted the Central Excise Officers visited the shop and effected seizure of gold. They had further stated that Shri Jagganath Kisandas Devi, Partner of M/s. J.K. Devi & Sons on learning that enquiry was being made by Central- Excise Officers, went to the shop of Shri Hindurao Pawar and told the officers that the gold was given by them for preparing ornaments and it belonged to them, but the officers told him that they would come to his shop for enquiry.

Shri Sadashiv Y. Ghodke had also 'sent a letter dated 13.1.82 addressed to the Assistant Collector of Central Excise, Satara Division stating that the statement given by him on 7.1.82 was false and that the gold under seizure was given to him by his brother Shri Mahadeo Ghodke and the same should be returned to M/s. J.K. Devi & Sons, the present appellant before us. On the basis of the above notice dt. 9.1.82 and the letter of Shri Sadashiv Ghodke dt. 13.1.82, further enquiries were made and the statement of Shri Jagganath Kisandas Devi partner of the J.K. Devi & Sons was recorded on 16.1.82. Shri J.K. Devi in his statement had claimed that Mrs. Manukabai Jijaba Jadhav is the owner of the gold under seizure and the said gold is out of stock-in-trade of their shop. He had produced both receipt voucher book and delivery voucher book of his shop as also extract of his G.S. 11 register and had stated that Mrs. Manukabai J. Jadhav had given to them her old ornaments for weighing 119.300 grams and 55.200 grams respectively on 10.12.81 for remaking new ornaments. He stated that he received the said gold ornaments under his receipt voucher No. 534/10.12.81 and 536/ 10-12-81 respectively and out of these old ornaments, he had given ornaments weighing 92.670 grams to Shri Mahadev Y. Ghodke under delivery voucher No. 537/7-1-82 for remaking new ornaments. He further stated that since Shri Mahadeo Ghodke was sick, he sent the gold bar made out of the above 92.670 grams with his brother to Shri Hindurao Pawar for drawing wire and pasta but as the bar broke at the time of drawing pasta, Shri Sadashiv Ghodke gave the same to Shri Hindurao Pawar for melting and preparing a bar. On 19.1.82 statement of Shri Mahadeo Yashwant Ghodke, certified goldsmith, was recorded. Statements of Shri Sadashiv

Y. Ghodke and Shri Hindurao Ganpatrao Pawar were also recorded on 19.1.82 and statement of Smt. Padmawati S. Ghodke was recorded on 20.1.82. In their subsequent statements, they had retracted their original statements and had stated that the gold belongs to M/s.

J.K. Devi & Sons and that the same, may be returned to them.

3. The statement of Mrs. Manukabai Jijaba Jadhav of Goa (Limb) was also recorded on 20.1.82 and she had stated that the ornaments belong to her and that she had given the old gold ornaments weighing 119.300 and 55.200 grams for preparing new ornaments to M/s. J.K. Devi & Sons. She had further stated that since she has not committed any offence under the Gold Control Act in respect of the said gold, the same may be returned to her and she may "not be penalised for the irregularities committed by Shri Mahadeo Ghodke. The gold under seizure was got assayed from Shri Ramachandra Vishnu Mangrule, an assayer who opined that the purity of gold is 23 carats and weighs 92.600 grams.

4. A show cause notice dated 22.2.1982 was issued by the Assistant Collector of Central Excise, Satara which appears at pages 1 to 10 of the Paper Book filed by the appellant. The show cause notice was issued to the following: (2) Shri Hindurao Ganpatrao Pawar, Certified goldsmith No. 13/77 H. N. 172, Sadashiv Peth, Satara.

(3) Shri Mahadeo Yashwant Ghodke, Certified goldsmith No. 21/68, H. No. 577, Shanivar Peth, Satara. 11 (4) M/s. J.K. Devi & Sons, Gold dealer's licence No. 1/57, Sadashiv Peth, Satara ; and All of them were desired to show cause why the primary gold under seizure should not be confiscated under Section 71(1) of the Gold Control Act, 1968. The appellant Shri J.K. Devi & Sons had replied to the show cause notice which appears at pages 11-13 of the paper book filed by them.

5. The learned Advocate Shri G.C. Solanki, on behalf of the appellant has submitted before us that at the time of seizure of the gold, the appellant firm's partner Shri Jagganath Kisandas Devi was present in the shop of Shri Hindurao G. Pawar. He submitted that this fact was not mentioned in the panchnama. He had requested the Excise officers to record his statement but the officers promised that

statement will be recorded later on and the appellant had sent a notice to the Assistant Collector of Central Excise, Satara through Advocate Shri I.R. Bagwan on 9.1.82 which appears at pages 35 and 36 of the paper book. Ha has submitted that the statements of panchas were duly recorded which appears at pages 15 and 16 of the paper book which is forming part of the record of Gold Control case. Pages 14 to 18 of the paper book is a record of personal hearing in the Gold Control Case. The statement of panch witnesses were duly recorded and one of the panch witnesses Shri Govardhandas Narayandas Devi was cross examined who had stated that when the panchnama was in process, Shri J.K. Devi had come to the shop of Shri Hindurao Pawar. The learned Advocate has put emphasis on the statement of panchas. He has put emphasis as to the presence of Shri J.K. Devi at the time of preparation of panchnama. In their statements panchas had accepted the factum that the panchnama was read over to them. The learned Counsel has submitted before us that the statement of Shri A.B. Awate Supdt. Central Excise, Satara as a detecting, seizure and investigating Officer at page 17 of the paper book was worth perusal. He has'submitted that Shri A.B. Awate, the investigating officer has stated that the gold belonged to M/s. J.K. Devi & Sons.

Relevant extract from the statement of Shri Awate in page 17 runs as under: It is true that as per the statement of Shri Hindurao Pawar dt.

191.82 I told him that the gold weighing 92.500 gms. seized on 7.1.82 from his shop in further enquiry has been found to be the gold of M/s. J.K. Devi & Sons which was given to Shri M.Y. Ghodke for the purpose of manufacturing gold ornaments.

6. The learned Counsel for the appellant has further submitted that the finding of the learned Collector of Customs (Appeals) that there is time lag between the supposed date of receipt of the gold on 10.12.81 by the appellant from the lady customer Mrs. Manukabai Jijabai Jadhav Goa (Limb) and the alleged date of delivery on 15.1.82, is not relevant. The jewellery was given to goldsmith on 7.1.82 and had returned the same on 13,1.82. He has submitted that the time lag is not relevant. The learned Counsel has submitted that all these subsequent statements

of Shri Mahadeo Yeshwant Ghodke, Shri Sadashiv Yeshwant Ghodke, Shri Hindurao Ganpatrao Pawar and Mrs. Padmavati Sadashiv Ghodke stated that the gold belongs to M/s. J.K. Devi & Sons and all subsequent statements are duly corroborated. Supplementary statements appear at pages 43 to 49 of the paper book filed by the appellant. The learned Counsel has submitted that in view of the corroborated statements, the gold which belongs to the appellant should be returned to them.

7. Shri Krishna Kumar, the learned Departmental Representative has submitted before us on behalf of the revenue that the gold has been confiscated under Section 71 of the Gold Control Act, 1968, in Chapter XII dealing with confiscation and penalties. He has further submitted that there was violation of Section 8(1) of the Gold Control Act and has relied on Section 99 of the Gold Control Act in Chapter XVI.Section 99' runs as under: Miscellaneous 99. Presumptions as to ownership of goldAny person who has in his possession, custody or control any primary gold, article or ornaments shall be presumed, unless the contrary is proved, to be the owner thereof.

8. The departmental representative has submitted that the gold was found in melting position with Shri Hindurao Ganpatrao Pawar and Shri Sadashiv Ghodke has accepted the ownership of the said gold. The statements recorded on 7.1.82 from Shri Sadashiv Y. Ghodke, Shri Hindurao G. Pawar, Shri Mahadeo Yeshwant Ghodke and Smt. Padmavati S.Ghodke are all corroborating and in view of these statements there is no doubt as to the ownership of the gold. All these statements were recorded under Section 63 of the Gold (Control) Act and are admissible in evidence. The subsequent statements given by them are all an afterthought and no relevance should be placed on the same. He has further submitted that the Learned Assistant Collector had held that ownership of the gold belongs to Shri Hindurao Ganpatrao Pawar from whom it was recovered in view of the provisions of Section 99 of the Act. Finding of the Asstt. Collector as to the ownership of the gold appears at page 14 of his Order. The learned departmental representative has submitted before us that M/s J.K. Devi & Sons have got no locus standi to file an appeal before the tribunal as the appellant is not an aggrieved party. There is no finding against the appellant. He has further submitted that Shri Hindurao G.

Pawar and" Shri Sadashiv Y. Ghodke have not filed any appeal against this Order.

He has also pleaded that the presence of Shri J.K. Devi at the time of seizure is not an important event in any way. He has submitted that function of Panchas is restricted only to the aspect whether the seizure is in accordance with law or not. He has pleaded that the appeal should be dismissed on the ground that the appellant had no locus standi to file an appeal. In the alternative, he has pleaded that the appeal should be dismissed on merits and the order passed by Collector of Customs (Appeals) should be confirmed.

9. We have heard both the sides. After going through the facts and evidence on record, we find that no penalty or punishment under the Gold Control Act has been imposed on M/s. J.K. Devi & Sons. We have gone through the paper book filed by the appellant. We have also gone through the Order passed by the Collector of Customs (Appeals) Bombay.

The Appellate Collector while passing the order had observed that the quantity of gold supposed to have been received from Mrs. M.J. Jadhav vide receipt voucher No. 534 has also been changed from 44.2 grams to 119.3 grams. Similarly, in voucher No. 536 dated 7.1.82 the quantity has been changed from 76.2 grams to 25.2 grams. There is thus no conclusive connection between the gold supposed to have been given by Smt. M.J. Jadhav and the primary gold seized from Shri H.G. Pawar. The above observation is a factual observation which cannot be ignored. The appellant's paper book does not contain any reference as to voucher No.534 and 536. The Learned Counsel for the appellant has not referred at all to this discrepancy and it clearly shows that induction of M/s.

J.K. Devi & Sons is an afterthought. The statements of Shri Sadashiv Y.Ghodke, Shri Hindurao G. Pawar, Shri Mahadeo Y. Ghodke and Smt.

Padmavati S. Ghodke recorded on 7.1.82 are very relevant. These were recorded under Section 63 of the Gold (Control) Act and art admissible statements. Tampering of voucher Nos. 534 and 536 which have not been contradipted by the appellant clearly shows that it is an afterthought and subsequent retracted statements of S/Shri S.Y. Ghodke, E.G. Pawar, M.Y. Ghodke and Smt. Padmavati

S. Ghodke are also afterthought and no relevance can be placed on the same. As regards the locus standi as to the filing of the appeal by M/s. J.K. Devi & Sons, we find that M/s.

J.K. Devi & Sous were one of the persons on whom the show cause notice was issued and a charge was also made against them. Under Section 81(1) of the Gold Control Act any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order : a) A decision or order passed by the Collector of Central Excise or of Customs, as an adjudicating authority ; (b) an order passed by the Collector (Appeals) under Section 80-A.Bar Council of Maharashtra v. M.V. Dabholkar etc.

, Honourable Supreme Court had held that the meaning of the words "a person aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to. him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved". Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words "a person aggrieved" is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach'is required in the backgrounds of statutes which do not deal with property rights but deal with professional conduct and morality. The words "persons aggrieved" in Sections 37 and 38 of the Advocates Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. The test is whether the words "person aggrieved" include "a person who has a genuine grievance because" an order has been made which prejudicially affects his interests". It has, therefore, to be found out whether the Bar Council has a grievance in respect of an order or decision affecting the professional conduct and etiquette.

11. In the said judgment, the Hon. Supreme Court referred to the case of Attorney-General of the Gambia v. Pierra Sarr N. Vie, 1961 Ace.

617Lord Benning observed about the Attorney-General's standing thus ; ...The words 'person aggrieved' are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busybody who is interfering in things which do not concern him ; but they do include a person who has a genuine grievance because an order has been made which prejudicially affects 'his interests. Has the Attorney General a sufficient interest for this purpose Their Lordships think that he has. The Attorney General in a colony represents the crown as the guardian of the public interest. It is his duty to bring before the judge any misconduct of a barrister or solicitor which is of sufficient gravity to warrant disciplinary action.

12. We very respectfully follow the judgment of the Honourable Supreme Court. We feel that in the instant case, though there is no direct (adverse findings against M/s. J.K. Devi & Sons, they definitely can be treated as an aggrieved person from the order passed by the Collector l(Appeals) or Assistant Collector, A copy of the show cause notice was (served on them by the Asstt. Collector and in the show cause notice they were specifically desired to show cause why the primary gold under seizure f. funs Id not be confiscated under Section 71(1) of the Gold (Control) Act, 1968, This shows that they were a party to the proceedings. We uphold that M/s- J.K, Devi & Sons arc the persons aggrieved and as such they had the right to file an appeal under Section 81(1) of the Gold (Control) Act, 1968. As regard the presumption under Section 99 of the Gold Control Act, this section appears under the heading "Miscellaneous" and as such non-mention of Section 99 in the show cause notice shall not effect the applicability of Section 99. Accordingly, we uphold the order passed by the Collector of Customs (Appeals), Bombay and the appeal file by the appellant is rejected.