

Collector of Central Excise Vs. Niranjan Prasad

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Court : Madhya Pradesh

Decided On : Feb-26-1996

Reported in : 1997(57)ECC123

Judge : A.R. Tiwari and; N.K. Jain, JJ.

Appeal No. : M.C.C. No. 214/89

Appellant : Collector of Central Excise

Respondent : Niranjan Prasad

Advocate for Pet/Ap. : Shri. B.G. Neema

Judgement :

ORDER

A.R. Tiwari, J.

1. At the instance of the applicant (Collector of Central Excise, Indore), the Tribunal [Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi] has stated the case and referred the under-noted questions of law under Section 82B of the Gold (Control) Act, 1968, arising out of the order passed in Appeal No. G/191/85-NR connectible with G/Ref/68-NRB for our opinion:--

(1) Whether the primary as defined in Section 2(r) of the Gold (Control) Act, 1968 require to conform to the fineness specified for a standard gold bar as defined in

Section 2(u) as held by the Tribunal? or

(2) Whether it is any gold of not less than 9 carats purity, in any unfinished or semi-finished form including ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires?

(3) Whether remnant of gold left over after manufacture of ornaments can be deemed to be broken piece of ornament covered within the definition of 'ornaments' in Section 2(p)?

2. We have heard Shri B.G. Neema, learned Counsel for the applicant. None appeared for the non-applicant.

3. The counsel for the applicant concerned before us that the property involved in this case is only 3 rattis of gold which is equivalent to 1/3 grams and the consequence is in the vicinity of Rs. 35.00, i.e., -- 32.00 to be exact.

4. After considering the statement of the case, we find that the same is not sufficient to answer the questions as projected and proposed. We would have called upon the Tribunal to submit sufficient statement of case to enable us to determine the question but in the face of the involvement of extremely petty amount, we find that it would not be proper to call upon the Tribunal to undertake the exercise of submission of fuller statement of case and fresh reference of questions and it would be fit to reserve these questions and leave them open for answer in some appropriate case involving proper level of property warranting confiscation.

5. In : [1986]159ITR940(SC) (Commissioner of Income-tax, Bombay v. K.A. Patch), it is held as under:--

It appears from what is stated before us that the tax liability involved in this case is an extremely petty amount. In the circumstances, without expressing any opinion on the merits of the High Court Judgment under appeal, we decline to interfere with that Judgment. The appeal is dismissed but without any order as to costs.

6. In view of the aforesaid position, we decline to demand proper statement of case and then to consider and answer the questions and find it fit to leave the same open with liberty to the applicant to take proper steps to obtain the considered opinion of this Court in regard to the aforesaid questions in appropriate case.

7. This Misc. Civil Case is thus disposed of in terms noted above but without any order as to costs.

8. A copy of this order is directed to be transmitted to the Tribunal.

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