

Ram Wadhaya Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-10-1983

Reported in : (1984)(15)ELT492TriDel

Appellant : Ram Wadhaya

Respondent : Collector of Central Excise

Judgement :

1. The facts, in so far material, in this Appeal to the Gold Control Administrator, transferred to the Tribunal pursuant to Section 82-K of the Gold (Control) Act, 1968 (hereinafter referred to as the Act) are- (a) a quantity of 102.450 gms. of gold and gold ornaments, unaccounted in the GS-13 Register, was seized under Section 66 of the Act under a reasonable belief that they were acquired in a manner contrary to the provisions of the Act, in consequence of a search of the premises of Appellant-a certified goldsmith-on 19-10-74; (b) three account books and seven paper slips indicating transactions of sale and purchase of gold and gold ornaments unauthorisedly were also seized; (c) in his reply to a notice to show-cause for violation of Sections 41 and 55 of the Act, the Appellant submitted, inter alia, that- (i) the semi-finished ornaments as well as the ear rings were all family ornaments brought for remaking and polishing that day itself and are not required to be entered in the register being personal ornaments. In any case, there was still time to have the necessary entries made (the Appellant being illiterate); (ii) the gold choori belonged to one Smt. Sita Rani wife of Shri Ram Saran and was brought to him to serve as a sample for its design. It need not have been

entered in the Register-no provision having been made therein; (iii) the account books and the slips of paper were all incomplete, fabricated, forged, and planted in a hurry, as it were, and cannot be relied upon; (iv) the calculation chart furnished along with the show cause notice was inflated on account of treating various entries pertaining to the several stages of one transaction only to be multiple transactions, so that the aggregate value of the transactions came to the impossible figure of Rs. Seven lakhs-hardly in consonance with the hand to mouth existence of the Appellant; (d) since the Appellant disowned the seized Account books and papers, they were sent for the opinion of the Government Examiner of questioned documents. He opined that they were all written by the person who made the entries in the GS-13 Register. A request for cross-examination of the Examiner was, however, turned down on the ground that it was neither necessary in view of the ratio of the decision in *M/s. Kanungo & Co. v. The Collector of Customs* [1973 S.C.C. (Crl.) 846 (August Part)], nor expedient in public interest as he is a busy person and, in any view, his opinion is already on record and he could not have usefully added to it. The Appellant, after examining the record and the opinion of the Examiner of questioned documents, reiterated the request for his cross-examination. The request was again turned down and no account of the Appellant's absence on the date fixed for hearing, (14-2-79), the adjudication was proceeded with ex-parte; (i) admittedly, the seized gold and gold ornaments were not duly entered in the GS-13 Register; (ii) the plea that they belonged to the members of the Appellant's family and were brought to his working premises on the day of seizure itself was untenable, firstly because there was sufficient time before the seizure for making the entries in the GS-13 Register and there was no reason as to why they were not so made except that the appellant wilfully desired not to make the entries, and secondly, if brought on that very day in the morning, they could not have reached the stage of conversion by 13.30 p.m. when they were seized; (iii) the gold and gold ornaments in a semi-finished condition do not, therefore, belong to the Appellant's family but are the stock in trade of the Appellant, not duly accounted for in his GS-13 Register; (iv) the bangle, however, belongs to Smt. Sita Rani, since it was stated to belong to her in the Appellant's very first statement; (v) the Government Examiner's opinion had conclusively established that the handwriting in the disowned documents was the same as that

of the person who admittedly made the entries in the GS-13 Register.

Consequently, it is proved that the Appellant had been "acquiring and disposing of gold and gold ornaments unauthorisedly and failed to maintain true and complete account of all gold received, held or disposed of in contravention of Sections 41 and 55 of the Act; (f) accordingly, the seized gold and gold ornaments barring the bangle, were ordered to be confiscated under Section 71 of the Act, subject to redemption on payment of a fine of Rs. 2000 and the Appellant was ordered to pay a penalty in a sum of Rs. 5000 under Section 74 of the Act; 2. In the grounds of Appeal as well as in the submissions made by Shri R.L. Chandna, the learned Advocate for the Appellant, the adjudication order was impugned solely in regard to the findings on the alleged transactions in gold and gold ornaments reflected in the seized documents and the levy of fine of Rs. 5000/- under Section 74 of the Act and not the seizure or confiscation subject to payment of fine of the gold or gold ornaments under Section 71 of the Act. It was submitted, inter alia, that-M/s. Kanungo & Co.

v. Collector of Customs [1983 ELT 1486] was misplaced; it was clearly distinguishable and inapplicable to the facts of the case; (b) the opinion of the handwriting expert was not evidence-he having not been examined or offered for cross-examination; (c) in any view, his evidence is frail in character, unlike that of a finger print expert, and requires to be corroborated by other independent evidence. Not having been so corroborated, it cannot be the basis for the levy of a penalty under Sec. 74 of the Act; (d) the appellant was illiterate and he used to get the entries in the GS-13 Register made by various persons. Just because the handwriting in some entries in the Register tallied with some of the entries in the Account books, it does not imply that it has been established that the Account books were maintained by the Appellant or under his directions or instructions or they were in the handwriting of some identified person who was his employee, accountant or a person acting on his instructions; indeed, it was not known at all as to who made the entries in the Account Books.

3. Shri Ramanathan, representing the Respondent, strongly supported the adjudication order and relied upon the Kanungo case to urge that in depart mental

proceedings it was not necessary that witnesses should, necessarily, be offered for cross-examination, before their evidence could be relied or acted upon.

4. An examination of the record revealed that the Collector of Central Excise, Meerut, had filed "cross-objections", notwithstanding that he accepted the order under Appeal even in regard to the release of the gold bangle. The so-called "cross-objections" were merely his submissions in support of the adjudication order. In the facts and circumstances of the case, no cross-objections, as known to law, are called for.

5. It would appear to us on a perusal of the papers and on the submissions made in the course of the hearing that-Kanungo & Co. v. Collector of Customs (1983 ELT 1486), all that was held was that persons who have given information need not be examined in the presence of the person against whom the proceedings have been initiated and it is not a mandatory requirement that he should be allowed to cross-examine such informants. Failure to afford any such opportunity does not amount to a violation of the principles of natural justice. It did not, however, appear if the Appellant in that case requested for permission to cross-examine the informants and such permission, despite the request, was turned down. For aught we know, no such request was made at the appropriate time and yet the failure to examine the informants or to grant permission to cross-examine them was made a grievance of, later; (b) it cannot be said that an expert who had given an opinion, the sole basis for a decision in the case, is on the same footing as an informant. Failure to offer him for cross-examination despite request once and again for reasons which, on their face, are untenable appears to militate against the principles of natural justice; (c) this apart, it had been held in a number of cases by the Supreme Court that- (i) expert opinion, is by its very nature, weak and infirm and cannot of itself form the basis for conviction. It is unsafe to base a conviction solely on expert opinion without substantial corroboration [AIR 1977 S.C. 1971- (Magan Bihari Lal v. The State of Punjab)-wherein (ii) the evidence of a handwriting expert, unlike that of a fingerprint expert, is generally of a frail character and its fallibilities have been quite often noticed. The Court should, therefore, be wary to give too much weight to the evidence of a handwriting expert [AIR 1973 S.C. 1346-Bhagwan Kaur v. Shri Maharaj Krishan Sharma-citing A.I.R.

(iii) the evidence of experts can never be conclusive as it is merely opinion evidence [(1963) 3 S.C.R. 722-Ishwari Prasad v. Mohammad Isa (iv) the Court can, of course, refuse to rely upon the opinion of an expert which is unsupported by reasons (A.I.R. 1959 S.C. 488); (v) the Court must satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the Court is to apply its own observation to the admitted or proved writings and to compare them with the disputed one, not to become a handwriting expert but to verify the premises of the expert in one case and apprise the value of the opinion in the other case. The comparison depends on an analysis of the characteristics in the admitted or proved writings and the finding of the same characteristics in a large measure in the disputed writing. In this way, the opinion of the deponent, whether expert or other, is subjected to scrutiny and although relevant to start with becomes "probative"-per Justice Hidayatulla in A.I.R. 1967 S.C. 1326 (Fakhruddin v. State of Madhya Pradesh); (d) in this case, the conclusion of the adjudication authority is solely based on the opinion of the handwriting expert-untested in cross-examination, uncorroborated by any independent evidence (like e.g. evidence of customers whose names were recorded in the slips of papers or account books seized), and unscanned by the adjudicating authority himself. Indeed, it is almost as if his opinion is the final word on the question of identity of the handwriting in the disputed documents. Nor do we know what reasons, if any, he had given in his opinion. Strangely enough, his opinion is not on record; (e) further, mere entries in account books, even if genuine and thus relevant and admissible in evidence, require to be corroborated by independent additional supporting evidence which may consist of vouchers, bills, or oral evidence proving the transactions in the account books.

6. For the aforesaid reasons, we hold that there is no material to sustain the penalty under Section 74 of the Act. We, therefore, allow the appeal and direct that the penalty in a sum of Rs. 5000, if paid, is to be refunded to the Appellant. Needless to say that the order of the adjudicating authority, in so far as the seized gold and gold ornaments are concerned, is not interfered with by us.