Gunvant and Others Vs. Collector of Central Excise and Others

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Court : Delhi

Decided On : Aug-28-1987

Reported in : [1990]69CompCas596(Delhi); 1988(15)ECC427; 1992LC532(Delhi); 1987(32)ELT53(Del)

Judge : Arun B. Saharya, J.

Acts : Gold Control Act, 1968 - Sections 82

Appellant : Gunvant and Others

Respondent : Collector of Central Excise and Others

Advocate for Def. : Rattan Lal, Adv.

Advocate for Pet/Ap. : Anil Divan, Adv

Judgement :

Arun B. Saharya, J.

1. By this writ petition, the petitioners have prayed for quashing the show-cause notice dated July 21, 1980 (annexure 1), issued by the Central Government in purported exercise of the powers conferred on them under section 82 of the Gold (Control) Act, 1968 (hereinafter referred to as 'the Act'), whereby it is proposed to revise the order dated December 13, 1979, of the Gold Control Administrator by which he set aside the Collector's order dated June 10/18, 1974, confiscating the

gold bangles found in possession of petitioner No. 1, and also imposing a penalty or Rs. 5,000 each on petitioners Nos. 1, 2 and 3.

2. The Central Excise Officer, Bangalore, seized 82 gold bangles on December 16, 1970, form the baggage of petitioner No. 1 and after issuing a show-cause notice to the petitioners, the Collector held that the seized gold bangles were not ornaments and that they were primary gold . He ordered them to be confiscated and also imposed penalty on the petitioners. An appeal against that order was rejected by the Administrator. On a revision petition, the Central Government directed the Administrator that the appeal be heard and decided de novo after examination of the case property in the presence of the appellants.

3. In the meanwhile, criminal proceedings were initiated in the Court of the Metropolitan Magistrate, Bangalore, for punishing petitioner No.1 for contravention of section 8(1) of the Act and for punishing petitioners Nos. 2 and 3 for abetting petitioner No.1 H.L. Acharya (PW-4) was produced as one of the prosecution witnesses. The gold bangles were got tested by him and he issued a certificate, exhibit P-6, that the bangles were hurriedly prepared by handling on the die mould, joints were not properly closed and they cannot be worn as they were, and that they were tested by touchstone method and were found to be of 24 carat purity. In his cross-examination, PW-4 deposed that persons belonging to different communities wear different types of ornaments, and that the shape and design of ornaments also differ. He stated that in Bombay, Bijapore, Gulbarga, Gujarat and Bangalore also, people wear gold ornaments of 24 carat purity. According to him, bangles like those involved in the case are worn by women as ornaments, and in case bangles like that were sold by anybody to him, he will purchase them as ornaments. The Magistrate noticed the contention of the prosecution that the bangles seized in the case were of 24 carat purity and from the gold of that purity, no ornaments are manufactured. After considering the definition of 'primary gold' and 'ornament' in the light of Explanationn to section 2(r), and on the basis of testimony of PW-4, the Magistrate found that the bangles are of purity of 24 carats but they are ornaments and that the prosecution failed to prove that the seized bangles are primary gold. thereforee, by an order made on March 29, 1977 (annexure F), the Magistrate acquitted the petitioners and ordered that the seized

bangles be returned to petitioner No.1. The appeal was preferred against the order of Magistrate directing return of the bangles to the petitioner but not against acquittal. This clear from the judgment dated December 9, 1977 (annexure G), of the Additional Sessions Judge, Bangalore City, who reversed the order of the Magistrate directing return of the bangles and allowed the appeal. The High Court of Karnataka did not interfere in revision against the order of the Sessions Judge. A special leave petition against it was admitted by the Supreme Court on January 22, 1979. Later, in view of pendency of present writ petition in this court, by an order dated October 29, 1985, the Hon'ble Supreme Court directed the confiscated ornaments to be returned to petitioner No. 1 on his furnishing bank guarantee for the value of the ornaments. Thus, the criminal proceedings came to an end.

4. In the adjudication proceeding, the Administrator heard the appeal de novo and made the order dated December 13, 1979 (annexure E). The ornaments Para 10 of the Magistrate's decision is clear that these are ornaments. Further, testimony of witness Shri H.L.Archarya before the Collector as well as before the court is very clear as to the fact that these are ornaments. Having regard to all the facts and circumstances of the case, I hereby set aside the order in original passed by the Collector and order that Consequential relief to be given to the appellants.

5. The Administrator based his decision on three distinct reasons, namely, (i) on personal inspection of bangles, they appeared to be ornaments ; (ii) the Magistrate also found that they are ornaments ; and (iii) that the testimony of H.L.Acharya before the Collector as well as before the court clearly established that they were ornaments.

6. The Central Government issued the impugned notice dated July 21, 1980, in purported exercise of its powers under section 82(2) of the Act, calling upon the petitioner to show cause why the order of the Administrator should not be annulled or modified. The relevant part of the notice read as under :

'Whereas the Government of India by virtue of powers conferred under section 82(2) of the Gold (Control) Act, 1968, examined the case records as also the impugned gold bangles with a view to satisfy itself about the correctness, legality and propriety of the above said order of the Gold Control Administrator ; and whereas on such examination the Government is tentatively of the view that on the facts and evidence brought on record, there may be justification to annual or modify the order of the Gold control Administrator on the grounds :

(i) the mint master in his assay report dated March 10,1980 (copy enclosed for reference), held part of the impugned gold to be of foreign origin and found its purity to be 987.9 and 998.4 ;

(ii) on an inspection of the impugned gold on June 10, 1980, at Madras, it was found that :

(a) the bangles were crudely finished and were of different sizes ;

(b) that these bangles were made by die-casting but were unpolished ;

(c) the inner surface of most of the bangles was uneven ; and

(d) the side surfaces had jagged edges.'

7. It is apparent that the Central Government proposed to exercise revisional jurisdiction under section 82(2) of the Act on the basis of fresh material which was not on record before the Administrator and which was obtained much later, namely, the Mint Master's Report dated March 10, 1980, and inspection of the goods on June 10 , 1980. The short question is whether they have the jurisdiction to do so.

8. The petitioners have placed on record a copy of the report dated March 10, 1980, from the Master of the Mint to the Deputy Director, Central Excise, Bangalore, made by him on a reference dated March 5, 1980, and also copies of certificates issued by the works manager for the Mint Master. On the basis of those certificates, it is concluded in the report that the samples sent to them were found to be 987.9 and 998.4 purity and 'to the best of our knowledge and belief, the sample marked as IM-963 is of foreign origin.' This material was not before the Administrator when he made the order dated December 13, 1979. It was open to the concerned authorities to get the seized gold bangles tested by the Master of Mint at the proper stage. They chose to get them tested by Mr. H.L.Acharya and

also relied on his testimony during the adjudication proceedings as well as at the trial before the Magistrate. On the evidence, the Magistrate acquitted the petitioners of the charge of violating section 8(1) of the Act. That finding was not challenged. No appeal was preferred against it. It became final. The Administrator also acted upon it, apart from independent appreciation of the testimony of H.L.Acharya before the Collector and reliance on his own inspection of the gold bangles before deciding the case.

9. It is well-settled that additional evidence could not be permitted even in an appeal to enable one of the parties to remove lacunae in presenting its case at the proper stage and to fill in gaps. (See State of U.P. v. Manbodhan Lal Srivastava, : (1958)IILLJ273SC). In exercise of its jurisdiction under section 82 of the Act. the Central Government can call for, and examine the record of any proceeding in which an adjudicating authority subordinate to it has passed any order or decision under the Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order. This power has to be exercised essentially on the basis of the record of proceedings before the subordinate authority. The legality or propriety of any decision or order of the subordinate authority must be tested on the basis of the material placed before that authority. No fault can be found with it on the basis of material which could be, but was not, obtained at the proper stage of investigation or on material obtained later. The revisional authority can call for and examine the record only for the purpose of satisfying itself as to the legality or propriety of any decision or order of an adjudicatory nature but it cannot restart investigation and also a finality of adjudicatory proceedings. The two cannot be mixed together.

10. In the instant case, the goods were seized in December, 1970. The petitioners were charged with an offence of alleged contravention of section 8(1) of the Act. They went through the entire process of criminal trial. The court found that the gold bangles were ornaments, and that they were not primary gold. The petitioners were acquitted. This circumstance, among other considerations, weighed heavily with the Administrator making the order dated December 13, 1979. After six years of seizure of the goods and long after criminal trial and adjudication proceedings in accordance with law, samples are again referred to another authority, and on a

report obtained after conclusion of all those proceedings, the Central Government proposes to exercise its power of revision under section 82 of the Act. The law cannot countenance such proposals. It is impermissible to test the propriety or legality of an order of an adjudicating authority on the basis of material not even placed before the subordinate authority. The revisional authority has no jurisdiction to do so.

11. The impugned notice dated July 21, 1980 (annexure I), is quashed. Rule is made absolute. Writ petition is allowed with costs. Counsel fee Rs. 3000.