

S.S. Agarwal Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-24-1983

Reported in : (1985)(22)ELT482TriDel

Appellant : S.S. Agarwal

Respondent : Collector of Central Excise

Judgement :

1. Shri S.S. Agarwal (hereinafter called the appellant) filed an appeal under Section 80 of the Gold (Control) Act, 1968 before the Government of India, against the Order-in-Original No. 18/Addl. Collr/Gold/1982, dated 30-7-1982 passed by the Addl. Collector of Central Excise, Kanpur in case No. V (15) Gold-Seiz. 16-Adj/82/27309/187R. The appellant was charged for contravention of Sections 16, 8(3) and (4) of the Gold (Control) Act, 1968. In regard to the contravention of Section 16, the party claimed that he held the gold coins with the ornaments in the capacity of a family and under Section 16(5), no declaration was required to be made as total holdings of gold coins and gold ornaments were only 1398.300 gms. excluding the weight of gems and stones.

2. With regard to the charges of contravention of Section 8 (3) and (4) of the Gold (Control) Act, 1968, 32 gold coins were seized from the possession of the appellant. He stated that 5 gold coins belonged to him, 5 to his son Sh. Pawan Kumar, 5 to Lord Ganesh Virajman at his residence and 12 to his wife Smt. Prema Devi. All these 27 gold coins were said to have been acquired before 1967. The rest of the 5 gold coins were stated to have been received from Sh. Ajay Kumar

Sengar on 22-5-80 through Smt. Prema Devi wife of the appellant and that the same belonged to Shri Ajay Kumar Sengar a friend of the appellant.

3. The Additional Collector of Central Excise, Kanpur ordered the confiscation of 5 gold coins weighing 40 grams under Section 71 of the Gold (Control) Act, 1968 and also imposed a penalty of Rs. 500 each on the appellant and Sh. Ajay Kumar Sengar under Section 74 ibid. However, an option was given to redeem these five gold coins on payment of Rs. 1,500 as redemption fine in lieu of confiscation under Section 73 of the Gold (Control) Act, 1968 within one month of the receipt of that Order No. 18/Addl. Collr/ Gold/1982, dated 30-7-1982.

4. Aggrieved by the said order of the Additional Collector of the Central Excise, Kanpur, the appellant filed this appeal before the Gold (Control) Administration, Govt. of India, New Delhi which was transferred to this Tribunal and treated as an appeal.

5. At the time of hearing of the case a primary objection was raised by the Departmental Representative Sh. A.K, Jain that this appeal was filed against the order of the Additional Collector of Central Excise in his capacity as Gold Control Officer for confiscation of primary gold and no appeal against the order of the Additional Collector of Central Excise lies to this Tribunal. Calcutta) Sunil Kumar Ghosh v. Collector of Central Excise, West Bengal, Calcutta, reported in 1983 ECR 1441 D CEGAT (Cal.) in support of his contention that from the provisions of Section 78 and the notification issued by the Government of India, it is clear that the Additional Collector of Central Excise is an officer below the rank of a Collector of Central Excise under Section 80 (amended) and therefore an appeal against the order of adjudication of the Gold Control Officer lower in rank than a Collector of Central Excise lies to the Collector (Appeals) and not to the Appellate Tribunal.

6. Sh. S.S. Agarwal the appellant argued his case in person and submitted that this issue is settled by CEGAT, New Delhi (Full Bench Decision) in the case of S. Kumar and Ors. v. Collector of Central Excise and Ors. reported in 1983 E.L.T. 1057 wherein the Hon'ble Tribunal had held that an appeal against the order of the Additional Collector of Central Excise lies to the Appellate Tribunal and not to the

Collector (Appeals). According to him, the entire gamut of the Gold (Control) Act is administered by the authorities appointed under the Excise Act by delegation of powers upon them pursuant to Sub-section (4) of Section 4 of that Act. The Administrator has conferred specific powers on the Collectors of Central Excise and Customs, Assistant Collector of Central Excise, Superintendent of Central Excise, Inspector of Central Excise or Preventive Officers of Customs and Sub-Inspector of Central Excise by various notifications issued from time to time. There are stations where the Collectors of Central Excise under the Excise Act hold dual charge i.e. also the charge of Collectors of Customs appointed under the Customs Act, 1962 and there are other stations where there are separate Collectors of Central Excise and Collectors of Customs.

7. According to him, in this case the impugned order shows that it was issued from the office of the Collector of Central Excise, Kanpur (Sarvodaya Nagar) Kanpur, passed by the Additional Collector of Central Excise, Kanpur and also signed by the Additional Collector of Central Excise. The Additional Collector of Central Excise has certainly to be a person and not a nonentity and if therefore, ever any question arises as to who this person is, one has to look at his definition somewhere when administratively it has not been defined under the Gold (Control) Act. If such is a situation, one has necessarily to refer to the Excise Act in view of the aforesaid delegation of powers upon them and under the Excise Act, Collector has been defined to include the Additional Collector and in view of the full Bench decision of this Tribunal-S.Kumar & Others (Supra) the appeal lies before this Tribunal.

8. He also argued that under Section 80 of the Gold (Control) Act as it stood prior to its amendment by the Finance (No. 2) Act, 1980, the Additional Collector of Central Excise and Customs, as the case may be, has been treated at par with Collectors. He drew our attention towards the provisions of Section 80 (1) (a) of the Gold (Control) Act which reads as under :- "Where the decision or order has been made by a Collector of Central Excise or of Customs as the case may be to the Administrator." According to him, the provisions of this Section make it clear that appeals against the orders of both the Collectors and Additional Collectors lie to the Gold (Control) Administrator and that there is no distinction for purposes of

appeals between the orders passed by Collectors or Additional Collectors under Section 80 as it stood at the relevant time. Even Section 80 as now amended by Finance (No. 2) Act, 1980 providing for appeals to the Collector (Appeals) retained its original character as in amended Section also the term used is "Collector of Central Excise or of Customs".

9. The last submission made by him is that the appellant in this case preferred the present appeal in accordance with the directions given in the order of appeal to the Gold (Control) Administrator and not to the Appellate Tribunal and he had suo motu transferred this appeal to the Tribunal and therefore this Tribunal is competent to hear this appeal.

10. The entire argument of the appellant seems to have been based on the decision given in *S. Kumar and Ors. v. Collector of Central Excise and Ors.* (1983 E.L.T. 1057). That case was under the provisions of the Excise Act which is a complete code in itself. In that case the matter for consideration was whether the Addl. Collector is a Collector for the purpose of Section 33 of the Central Excises and Salt Act, 1944.

After going through the provisions of the Central Excises and Salt Act, 1944, the Hon'ble Members of the Bench by majority decision held that "term Collector includes Additional Collector both under the Excise Act as well as under the Excise Rules by virtue of definition given in Rule 2 (ii) of Excise Rules" and under those circumstances it was held that an appeal against the order of the Additional Collector shall lie to the Appellate Tribunal and not to the Collector (Appeals).

11. The case before us is under the provisions of the Gold (Control) Act, 1968 which is a complete code in itself and as such we have to look into the provisions given under the Gold (Control) Act, 1968 for the decisions of the matter before us.

12. Provisions of the Gold (Control) Act are administered by the Administrator appointed under Section 4 of that Act. Under Section 4 -Section (1) of the said Act the Central Government appoints an Administrator for carrying out the purpose of that Act. Similarly under Sub-section (2) of Section 4, the Central Government also appoints as many persons as it thinks fit to be Gold (Control) Officers for purposes

of enforcing the provisions of the Gold (Control) Act. Under Sub-section (4) of Section 4, the Administrator has further been authorised to appoint such persons as he thinks fit to exercise or to any of the powers exercisable by him under that Act other than the powers under Sub-section (6) of Section 4 or under clause (g) of Sub-section (1) of Section 80 or 81.

13. Section 80 as amended by Finance (No. 2) Act of 1980 reads as under:- "Any person aggrieved by any decision or order passed under this Act by a Gold (Control) Officer lower in rank than a Collector of Central Excise or of Customs may appeal to the Collector (Appeals) within 3 months from the date of communication to him of such decision or order...".

"Section 81. Appeals to the Appellate Tribunal.-(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order...(a) on 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); (c) an order passed by the Administrator, Collector of Central Excise or of Customs or the Appellate Collector of Customs under Section 80 as it stood immediately before the appointed day; and (d) an order passed by the Administrator either before or after the appointed day under Section 81 as it stood immediately before that day...." 14. A perusal of the provisions of these two Sections show that any decision or order passed under the Act by the Gold (Control) Officer lower in rank than a Collector of Central Excise or of Customs will lie to the Collector (Appeals) and not to the Tribunal. It is only against the order or decision passed by the Collector of Central Excise or of Customs as an adjudicating authority, appeal lies to the Appellate Tribunal.

15. Nowhere under the Gold (Control) Act, 1968 it has been laid down that the Additional Collector of Central Excise who has been appointed as Gold Control Officer included in the expression of the Collector of Central Excise or of Customs. There cannot be any dispute that Additional Collector of Central Excise can also be appointed as a Gold (Control) Officer and when he works in the capacity of a Gold Control officer, he is definitely lower in rank than the Collector of Central Excise or of Customs. For the purposes of the provisions of Gold (Control) Act, 1968 it

cannot be said that the Additional Collector of Central Excise or of Customs working as a Gold Control Officer is a Collector of Central Excise or of Customs for the purpose of filing appeals under Section 81 of the said Act. Section 78 of the Gold (Control) Act, 1968 reads as under :- "Any confiscation may be adjudicated or penalty imposed under this Act (a) without limit by a Gold Control Officer not below the rank of Collector of Central Excise or of Customs; (b) subject to such limits as may be specified in this behalf by such other Gold Control Officer not below the rank of a Superintendent of Central Excise as the Central Government may by notification, authorise in this behalf." 16. The provisions of this section make distinction between the Collector of Central Excise or of Customs and the other Gold Control Officers not below the rank of Superintendent of Central Excise, by no stretch of imagination it can be presumed that the Additional Collector of Central Excise performing the duties of Gold Control Officer will be treated as Collector of Central Excise or of Customs for the purpose of filing the appeal against his order. *Sunil Kumar Ghosh v. Collector of Central Excise, West Bengal, Calcutta* (1983 ECR 1441 D) (CEGAT Calcutta) wherein it was held that the Additional Collector of Central Excise is an officer below the rank of a Collector of Central Excise under Section 80 (amended) and therefore any application against the order or decision of the Gold Control Officer lower in rank than a Collector of Central Excise lies to the Collector (Appeals) and not to the Appellate Tribunal.

18. We find no reason to differ from the judgment given by the Calcutta Bench of CEGAT. 19. As the appellant had filed the appeal before the Gold Control Administrator, Government of India, New Delhi, which was transferred to this Tribunal to be treated as an appeal, we feel that the interest of justice would be served if the appeal papers be returned to the Appellant for being presented, if he so chooses, before the appropriate authority, i.e. the Collector (Appeals) and the Collector (Appeals) shall not reject the appeal on the ground of limitation, if the appeal is presented within 30 days from the date of receipt of the appeal papers by the appellant or on return of the papers by the registry of this Tribunal.