Hazi Ehsamul Haq Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-17-1992

Reported in : (1992)LC457Tri(Delhi)

Judge : S Peeran, K T P.K.

Appellant : Hazi Ehsamul Haq

Respondent : Cce

Judgement :

1. This is an appeal against the order dated 19.7.1989 passed by the Collector of Customs (Appeals), New Delhi.

2. Briefly stated the facts of the case are that on 1.7.1972 the officers of the Kanpur Central Excise Collectorate searched the business premises of the appellants and recovered finished and unfinished new ornaments as well as used ornaments and pieces of ornaments collectively weighing 1153 gms. The Collector of Customs (Preventive), Indo-Nepal Border vide his order dated 23.11.1973 adjudicated the case and confiscated the seized gold and gold ornaments under Section 71 of the Gold (Control) Act, 1968. Against the order passed by the Collector the appeal preferred before the Gold Control Administrator was decided vide order No. 241 dated 15.6.1977 with the direction that the case be readjudicated after giving proper opportunity to the respondents to co-relate the seized ornaments with the statutory records. Thereafter, the Additional Collector readjudicated the case and vide his order dated 15.9.1981 confiscated the gold

ornaments but gave the option for redemption of the same on payment of a fine of Rs. 70,000/-He also imposed a penalty of Rs. 20,000/- on the appellant. An appeal was filed against the order dated 15.9.1981 passed by the Additional Collector. The Collector (Appeals), New Delhi vide his order dated 15.9.1981 once again remanded the case for de novo adjudication. The Deputy Collector re-adjudicated the case and vide his order dated 14.8.1986 dropped the proceedings against the appellant and ordered the release of the seized gold/gold ornaments on the ground that despite repeated orders no efforts had been made to co-relate the seized gold/gold ornaments with the entries in the GS-13 Register which according to the case records sent in 1974 to the Appellate Collector of Customs, New Delhi. The Deputy Collector (Tech.), Kanpur challenged the order dated 14.8.1986 passed by the Deputy Collector and in the impugned order dated 19.7.1989 the Collector (Appeals), New Delhi once again remanded the case for de novo adjudication by the original authority having regard to her observations that in view of the appellant's statement dated 1.7.1972 and the seized diary showing transactions in gold, there was sufficient evidence on record to show that he was engaged in the sale and purchase of gold and gold ornaments.

3. On behalf of the appellant the learned Advocate Shri P.N. Awasthi appeared before us. He stated that after seizure of the gold and gold ornaments in 1972 the case was adjudicated on several occasions and each time it was remanded requiring the original authority to re-adjudicate the case after affording proper opportunity to co-relate the seized gold ornaments with the statutory records. He added that on the last occassion the Collector (Appeals), New Delhi in his order dated 15.9.1981 had also remanded the case for de-novo adjudication with similar directions and the Deputy Collector vide his order dated 14.8.1986 had dropped the proceedings on the grounds that despite repeated orders no efforts had been made to co-relate the seized gold/gold ornaments in the GS-13 Register which was according to the case records sent in 1974 to the Appellate Collector, Delhi. He contended that under these circumstances the impugned order of the Collector (Appeals) remanding the matter for de novo adjudication on the basis of the observations that the appellant in his statement dated 1.7.1972 had admitted that he was engaged in the sale and purchase of gold and gold ornaments was illegal. He stated that throughout the appellant's stand had been that the statement

recorded immediately after the seizure was obtained through force and coercion and it was retracted immediately. He added that in view of the appellant's consistent stand that the seized gold and gold ornaments were fully accounted for in the GS-13 Register and the owners of the seized gold had also come forward to claim their gold there can be no adverse finding against the appellant unless the department establishes with reference to the entries in the statutory record that any part of the seized gold was unaccounted. In support of his contentions he placed reliance on the decision of the Allahabad High Court in the case of L.

Kashinath v. CCE, Allahabad . On these grounds he pleaded that the order passed by the Collector (Appeals) may be set aside.

4. On behalf of the respondent the learned SDR Shri Rakesh Bhatia stated that in the statement dated 1.7.1972 recorded immediately after the seizure of the gold and gold ornaments from the appellant, the appellant had stated that the gold and gold ornaments weighing 1153 gms. were not accounted for. He contended that the entries in the private diaries seized from the appellants' premises also confirmed that the appellant was engaged in the sale and purchase of gold and gold ornaments. Shri Bhatia contended that under these circumstances the Collector (Appeals) had correctly observed that non-availability of GS-13 Register was of no consequence. He pleaded for rejection of the appeal.

5. We have considered the submissions made on behalf of both sides and examined the records of the case. It is seen that despite the adjudication proceedings having been completed on 3 occasions this case has not reached the stage of finality. The case was first adjudicated by the Collector of Customs (P), Indo-Nepal Border who vide his order dated 23.4.1973 confiscated the seized gold/gold ornaments under Section 71 of the Gold (Control) Act, 1968 and also imposed a personal penalty of Rs. 2000/- under Section 74 ibid. The Gold Control Administrator vide his order No. 240/77 dated 15.6.1977 while setting aside the Collector's order directed the Collector to re-adjudicate the case in accordance with law after giving proper opportunity to the appellant to co-relate the seized ornaments with the statutory accounts. Thereafter the case was adjudicated by the Additional Collector of Central Excise, Kanpur, who vide his order dated 15.9.1981

confiscated the seized gold and gold ornaments but gave the option for redemption on payment of a fine of Rs. 70,000/-. He also imposed a penalty of Rs. 2,000/-. On an appeal being preferred by the respondent the Collector (Appeals) once again set aside the order passed by the Additional Collector with the directions that the case be re-adjudicated after making available to the appellant the statutory records and after taking into consideration any letters and statements by the purported customers. The case was readjudicated by the Deputy Collector who in his order dated 14.8.1986 extended the benefit of doubt to the respondent and dropped the proceedings on the grounds that a number of persons had come forward to claim the seized ornaments and the respondent had been consistent in his stand that the seized gold and gold ornaments were duly recorded in the GS-13 Register which having been sent by Collector (Preventive), Indo-Nepal Border to Appellate Collector, New Delhi on 14.6.1974 was no longer available.

Being aggrieved by the order passed by the Deputy Collector the Department filed an appeal and in the impugned order the Collector of Central Excise (Appeals) set aside the order dated 30.6.1986 passed by the Deputy Collector and remanded the case to the original authority for de-novo adjudication on the basis of the relevant facts on record and in the light of the observation made in the order. The operative part of the impugned order reads as follows: I observe that there is no denying the fact that Hazi Ehsanul Haq in his statement dt. 1.7.1972 has admitted that the gold/gold ornaments weighing 1153 Grms were not accounted for. The issue of non-availability of GS-13 register, is, therefore, of no consequence to alter the reality of non-accountal of the Gold/Gold ornaments.

Violation of Gold Control Act therefore, stands established. As regards sale/purchase of Gold/Gold ornaments, it is quite evident from the entries of the aforesaid private Diaries that the respondent was engaged in the sale/purchases of Gold/Gold ornaments against cash payment. The violation of the provisions of the Gold (Control) Act, 1968 again stand established. Regarding the point of benefit of doubt given to the respondent by the adjudicating authority solely on account of the non-availability of GS-13 register, I find that there is enough force in the plea taken by the appellant as in the face of the statement dt. 1.7.1972 of Hazi Nahsanul Haq admitting that the Gold/Gold ornaments were not accounted for is enough to prove the charge and more so the transaction made for sale/purchase of gold/gold ornaments against cash payment are enough evidence to prove that Hazi Nahsanul Haq was engaged in the sale & purchase of Gold/Gold ornaments and the seized Gold/Gold ornaments, being unaccounted for, was meant ultimately for such illegal transactions.

6. In view of the foregoing facts and circumstances of the case I find that the Order-in original appealed against is not based on facts and, therefore, not considered as legal and proper and, for these reasons, not sustainable.

The Order-in-original is, therefore, set aside and the case is remanded back to original authority for de novo proceedings and passing of fresh order taking into consideration all the relevant facts on records in the light of the above discussions. In the result, the appeal succeeds.

6. It is seen that in the show cause Memo issued to the appellant on 22.12.1972 the only charges were in regard to the contravention of Sections 42 and 55 of the Gold (Control) Act, 1968 while setting aside the order dated 23.11.1973 passed by the Collector (Preventive), Indo-Nepal Border and remanding the case for de novo adjudication the Gold (Control) Administrator had specifically directed that the case be re-adjudicated after giving proper opportunity to the party to co-relate the seized ornaments with the statutory records/accounts. The Collector (Appeals), New Delhi while setting aside the order dated 15.9.1981 passed by the Additional Collector of Central Excise, Kanpur had also given specific directions that the case was to be adjudicated de novo after making available to the appellant the statutory records and after taking into consideration any letters and statements by the purported customer. Having regard to the directions of the Collector (Appeals) and taking into account the fact that the seized GS-13 Register which was sent by the Collector (Preventive), Patna on 14.6.1974 to the Appellate Collector, New Delhi was not available and there were several claimants of the seized gold and gold ornaments the Deputy Collector in his order dated 14.8.1986 extended the benefit of doubt to the appellant and dropped the proceedings.

7. Having regard to the facts outlined above, we are of the view that in this case where the appellant has been made to run from pillar to post during the last 20

years in his quest for justice, it was not open to the Collector (Appeals) to give a new twist to the matter by remanding the case for de novo adjudication with the observations that non-availability of the GS-13 Register was of no consequence and that there was sufficient evidence in the shape of the appellant's statement dated 1.7.1972 and the entries in his private diary to prove that he was engaged in the sale and purchase of gold and gold ornaments. It is seen that the appellant had at the very first opportunity retracted the statement and it has been his consistent stand that the seized gold and gold ornaments were recorded in GS-13 Register and he was not given any opportunity by the concerned officer to co-relate the ornaments with the entries in the Register. The appellant has also been insisting that a large part of the seized gold and gold ornaments was received by him from different customers and in fact a number of parties have come forward with the demand for the return of their gold. Under these circumstances and having regard to the specific directions of the appellate authorities on earlier occasions according to which the appellant was to be given the opportunity to co-relate the seized gold and gold ornaments with the statutory records, we hold that the impugned order directing the original' authority to adjudicate the case de novo for the fourth time on an entirely new charge to be framed on the basis of the appellant's retracted statement and certain entries in his diary will not be sustainable.

8. In view of the above discussion we set aside the impugned order and allow the appeal.