

**(2000) 01 AHC CK 0183**

**Allahabad High Court**

**Case No:** Central Excise Ref. No. 76 of 1984

Hazari Lal Gauri Shanker

APPELLANT

Vs

Collector of Central Excise

RESPONDENT

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**Date of Decision:** Jan. 21, 2000

**Acts Referred:**

- Gold (Control) Act, 1968 - Section 82B

**Citation:** (2000) 69 ECC 340

**Hon'ble Judges:** S. Rafat Alam, J; M.C. Agarwal, J

**Bench:** Division Bench

**Final Decision:** Disposed Of

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### **Judgement**

M.C. Agarwal, J.

This is a reference u/s 82B of the Gold (Control) Act, 1968 made by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi at the instance of the applicant M/s Hazari Lal Gauri Shanker, the following question stated to be of law and to arise out of the Tribunal's order dated 29th of July, 1983 passed in Appeal No. GC (Del)(T) A.No. 32/82-NRB has been referred for the decision of this Court:

Whether in the facts and circumstances of the case and on a true construction of Sections 71 & 79 of the Act, the failure to give show cause notices to the persons claiming ownership of the new gold ornaments had vitiated the order relating to their confiscation.

2. The facts of the case are that the applicant was a partnership firm with Sri Gauri Shanker and his son Krishna Gopal as its partners. The business premises of the applicant were searched by the authorities under the Gold Control Act on 29th of March, 1980 and from an iron safe installed in the room adjacent to connected with the shop, 275 pieces of new gold ornaments weighing 1092.400 gms. and 20.900 gms. of old gold were found and seized as unaccounted gold in terms of Section 66 of the Act. Both the aforesaid persons were present at the time of search and

seizure and Krishna Gopal had at that time stated that the said property belonged to the firm and that new ornaments had been prepared by the goldsmiths. It was also admitted that the aforesaid articles were not entered in his books because the goods were received by his brother Inder Gopal. Regarding the old gold weighing 20.900 gms. it was pleaded that the same belonged to a relative Jagdish Chand. This part of the claim was later admitted and the articles were released in favour of Jagdish Chand. As regards the new gold ornaments, the adjudicating officer i.e. the Collector, Central Excise, Kanpur found that the goods belonged to M/s Hazari Lal Gauri Shanker and there was contravention of the provisions of Section 8(2) of the Gold (Control) Act and Section 36 of the Act read with Rule 13 and Section 55 of the Act. The Collector, therefore, ordered the goods to be confiscated with an option to the owner to redeem the same on a fine of Rs. 50,000. A penalty of Rs. 25,000 was also imposed on M/s Hazari Lal Gauri Shanker u/s 74 of the Act. The applicant preferred an appeal to the Tribunal which was allowed only to the extent that the penalty was reduced to Rs. 10,000. In other respect, the appeal was dismissed. During the proceedings the applicant had set up a case that the new Gold ornaments belonged to several persons who had got them manufactured by getting their old ornaments converted and they were lying with the applicant only by way of "amanat". This contention was not accepted at any stage of the proceeding. It is out of the aforesaid order of the Tribunal that the question, as reproduced above, has been referred for the opinion of this Court.

3. We have heard Sri Janardan Sahai, learned Counsel for the applicant and Sri Surya Prakash, learned Counsel for the opposite party.

4. The contention of the learned Counsel for the applicant is that several persons had sent applications to the Superintendent, Central Excise claiming ownership of certain quantities of new gold ornaments which had been manufactured by certain goldsmiths on their behalf and under their instructions, the goldsmiths had handed over the ornaments to Inder Gopal and that the goods should be returned to them. It is contended that in view of Section 79 of the Act, the adjudicating officer should have issued notices to such claimants and since no notices were issued to these persons, the seizure is illegal. Section 79 reads as under:

Section 79. Giving of an opportunity to the owner of gold etc.

No order of adjudication of confiscation or penalty shall be made unless the owner of the gold, conveyance, or animal or other person concerned is given a notice in writing -

(i) informing him of the grounds on which it is proposed to confiscate such gold, conveyance or animal or to impose a penalty; and

(ii) giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the confiscation or imposition of penalty mentioned therein and, if he so desires, of being heard in the

matter:

Provided that the notice and the representation referred to in this section may, at the request of the owner or other person concerned, be oral:

Provided further that where no such notice is given within a period of six months from the date of the seizure of the gold, conveyance or animal or such further period as the Collector of Central Excise or of Customs may allow, such gold, conveyance or animal shall be returned after the expiry of that period to the person from whose possession it was seized.

Explanation -- Where any fresh adjudication is ordered under this Act, the period of six months specified in the second proviso shall be computed from the date on which such order for fresh adjudication is made.

5. The aforesaid provision shows that the notice is required to be issued to the owner and not to any person, who may assert to be the owner. Admittedly the gold was seized when it was in possession of the applicant firm and u/s 99 any person who has in possession, custody or control any primary gold, article or ornament shall be presumed, unless the contrary is proved, to be the owner thereof. Therefore, there was a presumption accompanied by the certain admissions and the contrary was not proved by the applicant. The burden was on the applicant which it had attempted to discharge but could not discharge it to the satisfaction of the authorities. The finding is that the applicant was the owner of the gold in question and this finding being a finding of fact, is not open to review in a reference particularly when no reference of any question challenging the validity of this finding of fact has been referred. The question merely is whether the notice should have been issued to persons who claimed to be the owners. The answer to this question is self-evident because the law requires a notice to be issued to an owner and not to any person who may merely set up a claim of ownership.

6. Reliance is placed on a judgment of this Court in Krishna Das Agarwal v. Union of India, 1977 UPTC 165, in which certain gold was seized from the possession of M/s Kaka Silver Refinery Co. and was confiscated for alleged contravention of provision of the Gold (Control) Act. One of the claimants had come to this Court in a writ petition claiming that since he was not given any opportunity of hearing before confiscation, the order of confiscation was violative of principle of natural justice. The judgment of this Court shows that it was at the very inception that it was claimed that the gold belonged to Krishna Das Agarwal. Further that was a case of a refinery doing the job of refining gold belonging to others. The present is, on the other hand, a case of a dealer in ornaments and then the persons claiming the ownership of gold ornaments neither asserted their claim properly before the adjudicating officer nor filed an appeal to the Tribunal and the present question has not been referred at their instance. Therefore, this judgment is not applicable to the facts of the present case. As pointed out above, the Tribunal has held the petitioner

to be the owner of the goods in question. Therefore, the question, as referred to this Court, cannot be said to arise out of the order of the Tribunal and it is merely academic because insofar as the petitioner is concerned, if he contends that it is not the owner of the goods because in that even the confiscation does not affect the applicant at all.

7. In view of the above, our decision in the matter is;

(1) the question, as referred to this Court, does not arise out of the order of the Tribunal in view of its finding that M/s Hazari Lal Gauri Shanker is the owner of the goods.

8. In view of the petitioner's contention that the gold did not belong to it, the question is of mere academic value insofar as the petitioner is concerned and we decline to answer the same.

9. In the circumstances of the case, there will be no order as to costs.