

HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU

LPAOW no. 86/2008
CMP no.103/2008;

Date of order : 10-02-2009

Enclave Jewellery Ltd.

v

State of J&K & ors.

Coram:

Hon'ble Mr. Justice Barin Ghosh, Chief Justice

Hon'ble Mr. Justice Virender Singh, Judge

Appearing counsel:

For appellant(s) : Mr. Parag Sharma, Advocate.

For respondent(s) : Mr. M. I. Qadiri, AG.

i) Whether approved for reporting in
Law Journals?

Yes

ii) Whether approved for reporting in
Press?

Optional

Per Barin Ghosh, CJ (Oral):

Section 15-A of the Jammu and Kashmir General Sales Tax Act, 1962 authorises establishment of check posts and inspection of goods in transit. The said section requires establishment of such check posts for inspection of goods in transit by notification to be published in the Government Gazette. The section authorises the Officer-in-Charge of the Notified Area or the Commissioner or any other officer, not below the rank of Inspector, but authorised by the Commissioner, to require

facilitation of inspection and checking of goods in transit. Sub-section (4)(a) of the said section

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authorises contraband found in course of inspection and checking to be seized and sub-section (9) of the said section prescribes the mode of furnishing security in respect of the amounts dealt with under sub-section (4)(a) of the said section.

In the instant case, power has been exercised under section 15-A and the place where the goods of the appellant were checked and inspected, was duly notified. Subsequent thereto, those were seized and penalty was also imposed. The appellant did not make any effective representation before the authority which seized the goods and imposed the penalty. The appellant also did not take steps to furnish security for release of the seized goods. The appellant, thereupon, preferred an appeal under section 11 of the Act before the Commissioner inasmuch the person who exercised power of seizure under section 15-A was the Deputy Commissioner. The appellant also did not effectively pursue the appeal preferred by him before the Commissioner. After having lost before the Commissioner, the appellant did not approach the Tribunal which right has been granted to him by section 11A of the Act. Instead, the appellant approached this Court by filing a writ petition and therein

contended that he was not granted appropriate opportunity of being heard.

The Writ Court found, as

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a fact, that it was the appellant who sought adjournment after adjournments and, accordingly, held that there was no dearth of providing opportunity of being heard to the appellant. It opined that the cause thus raised is of no merit. Against that order, the present appeal has been filed, wherein the principal contention as was raised before the Writ Court has been given a go by. Instead, it has been contended that there is nothing which would suggest that the Deputy Commissioner, who purported to exercise power under section 15-A, was authorised by the Commissioner to do what he did. In addition to that, it was stated that the moment the Deputy Commissioner was authorised to do what he did, which the Commissioner could also do, the appeal against the order passed by the Deputy Commissioner before the Commissioner was not permissible, for, the Deputy Commissioner was, in fact, exercising the same power as that of the Commissioner.

Until before us, the appellant did not contend that the Deputy Commissioner, who exercised the power under section 15-A, was not authorised by the Commissioner. It is not a question of law; it is basically a question of fact. In the event grant of authority by the Commissioner is

absent, then that is a factual matter which must be raised and decided at the earliest opportune

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moment. In the present appeal, the appellant, we think, should not be permitted to agitate such a factual question for the first time.

Right to prefer appeal is a statutory right. In the instant case, the Act granted the right to prefer an appeal to the Commissioner against an order passed by the Deputy Commissioner while exercising powers under section 15-A of the Act. In the circumstances, despite the Deputy Commissioner, being authorised by the Commissioner to exercise powers of the Commissioner, the Statute has recognised the right of appeal in favour of a person who has suffered an order passed by the Deputy Commissioner while exercising such power of Commissioner, by preferring an appeal before the Commissioner.

In the circumstances, the contention of the appellant that the appeal was incompetent before the Commissioner is not acceptable. The appeal, accordingly, fails. The same is dismissed.

(Virender Singh)
Judge

(Barin Ghosh)
Chief Justice

Jammu,
10.02.2009

A. H. Khan, JR