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SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 371/47/B/15-RA | 1033

Date of Issue 18.07.2021

ORDER NO 3/2021-CUS (WZ)/ASRA/MUMBAI DATED 15.01.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Dhanesh Parshottam Soni

Respondent : The Commissioner of Customs, Ahmedabad.

Subject : Revision Applications filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. AHM-CUSTOM-000-APP-061-15-16 dated 09.07.2015 passed by the Commissioner of Customs (Appeals), Ahmedabad.

ORDER

The revision application has been filed by the Shri Dhanesh Parshottam Soni against the order in Appeal No. AHM-CUS-000-APP-061-15-16 dated 09.07.2015 passed by the Commissioner (Appeals), Ahmedabad.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Dhanesh Parshottam Soni, at the Sardar Vallabhai International Airport, on 07.02.2014 after he attempted to pass through the green channel, in his disembarkation slip he had declared that he was not carrying any dutiable goods. On being frisked he was found wearing a gold ring, a gold chain and a gold Kada totally weighing 290.320 grams valued at Rs. 7,38,336/- (Rupees Seven Lakhs Thirty eight thousand Three hundred and Thirty six).

3. After due process of the law vide Order-In-Original No. 36/ADC-MRM/SVPIA/O&A/2015 dated 10.03.2015 the Original Adjudicating Authority ordered confiscation of the gold under Section 111 (l) and (m) of the Customs Act, 1962, but allowed redemption of the same on payment of fine of Rs. 75,000/- (Rupees Seventy five thousand) and imposed penalty of Rs. 50,000/- (Rupees Fifty thousand) under Section 112 (a) and (b) of the Customs Act, 1962. A penalty of Rs. 25,000/- (Rupees Twenty five thousand) was also imposed under section 114AA of the Customs Act, 1962.

4. Aggrieved by this order the Passenger filed an appeal with the Commissioner of Customs (Appeals), Commissioner (Appeals) vide his order in appeal No. AHM-CUS-000-APP-061-15-16 dated 09.07.2015 rejected the appeal of the Applicant.

5. Aggrieved with the above order the Applicant has filed this revision application, interalia on the grounds that;

5.1 The learned Commissioner (Appeals) has not appreciated the fact that the appellant was wearing the gold articles when he departed from India on the ground that the appellant did not produce any purchase or sale bill at the time of departure. The sales bill has been produced by the appellant only after arrival, which is not considered proper and has been treated as after thought. The

appellant would like to submit that the Customs department has not publicized the rules concerning the Passenger going abroad. No layman who is going for the first time out of India would be aware about the provision which is not referred to in the impugned order, but claimed that appellant should have produced purchase/sale bill of gold at the time of departure.

5.2 The appellant submits that one gold ring, one gold chain and one gold kada is not a quantity which could be suspected. This much of gold article would be worn by any man or woman even while living in India or going abroad. The purpose of wearing gold is not only ornamental but also it acts as financial liquidity in the event of financial crunch which a Person may face while moving in India or abroad. Since there was no doubt raised by the officers of Customs department when the appellant had departed from India, the department has no legal right to refuse accepting the genuine contention of the appellant by citing flimsy grounds.

5.3 The appellant submits that the confiscation of the gold articles is absolutely unsustainable under the law, therefore, confiscation and consequent redemption fine is required to be quashed and set aside.

5.4 The appellant submits that since the gold was not liable for confiscation, it is immaterial whether the mensrea was involved.

5.5 It is not true that the appellant declared in the disembarkation slip given to the customs officers that he was not carrying/having any dutiable goods. On the contrary, column 6 of the disembarkation slip only requires declaring "total value of dutiable goods being imported". The appellant had categorically stated in statement dated 07.02.2014 recorded under Section 108 of the Customs Act, 1962 that "on being asked with reference to the above panchnama, I state that I have brought gold Necklace, ring and bracelet and at the time of departure, I have not obtained export certificate." From this specific answer, it is abundantly evident that the customs officer accepted these depositions. The appellant reiterated this fact in his further statement dated 24.02.2014. It is further to be pointed that while departing the appellant had met the customs officer but he did not issue the export certificate since he needed approved valuer's certificate which was not available with the appellant at the material time.

5.6 The department has not adduced any evidence to dispute the said sales bill No.381 dated 10.04.2002 of M/s. Mahendra & Company, Ahmedabad as evidence of purchase in India. Having conceded that the said articles of gold ornaments were taken out of India by the appellant at the time of departure, it cannot be

alleged at the time of its re-import on return to India that they cannot be considered as 'bonafide baggage' merely on the ground that no export certificate was obtained at the time of departure. In the absence of export certificate, the fact whether the goods were in fact taken out of India during departure on 29.01.2014 could have been verified from the collateral evidence, i.e., purchase bill, produced by the appellant. Though the department placed reliance on the said purchase bill, it did not, for unknown reasons, consider necessary to verify genuineness of the same or get identity of the said articles correlated with the bill. The said collateral evidence, therefore, stands uncontroverted.

5.7 Without prejudice to the above, the appellant says and submits that penalty under section 114AA of the Customs Act, 1962 is imposable only in cases where false declaration showing export of goods has been made by an exporter, as the offences attributable thereto are criminal in nature. This is abundantly clear from the deliberations on the purport and intent of the said section 114AA as contained in paragraph 62 to 66 of the 27th report of Standing Committee on Finance (2005-2006), Fourteenth Lok Sabha, on the Taxation Laws (Amendment) Bill, 2005.

6. In view of the above, a personal hearing in the case was scheduled on 05.12.2019, 08.12.2020, or 22.12.2020. The Applicant in his letter dated 19.12.2020 stated that the written submissions made may be taken on record and considered it to be his final response. Nobody from the Respondent side attended the hearing.

7. It is observed that the Applicant has submitted that he had declared the gold at the time of his departure, however he has not submitted an export certificate evidencing the same. There are elaborate procedures laid down for declaration of goods, which are required to be taken abroad and brought back on return of the Passenger. As there is no record of the same, the issue cannot be decided on such unsubstantiated claims. The purchase bill submitted cannot validate the submission that the same gold articles were taken abroad and brought back. The Appellate authority has rightly held these claims as unsubstantiated and has negated them and the Government agrees with the contention. The Applicant chose to not declare the gold ornaments and opted for the green channel, without declaring the dutiable items in his declaration slip. Dutiable items are required to be mandatorily declared as per section 77 of the

Customs Act, 1962. As such the confiscation of the gold is justified. The Government observes that the quantum of redemption fine and penalty imposed is quite reasonable as compared to that imposed in similar cases. The Applicant was wearing the gold articles, these facts must have weighed on the mind of the original adjudicating authority in allowing redemption and imposing reduced fine and penalty and therefore it does not merit further reduction. The Government therefore holds that the Original adjudicating Authority has considered all relevant points in allowing the confiscated gold ornaments to be released on payment of redemption fine and penalty, and the Appellate authority has rightly upheld the same. Under the circumstances the Revision Application is liable to be rejected.

8. Accordingly, The impugned Order in Appeal No. AHM-CUSTOM-000-APP-061-15-16 dated 09.07.2015 passed by the Commissioner (Appeals), Ahmedabad is upheld. Government however, observes that penalty has been correctly imposed under section 112(a). There is no ground for imposing penalty under section 114AA. The penalty of Rs. 25,000/- (Rupees Twenty five thousand) imposed under section 114AA of the Customs Act, 1962 is set aside.

9. Revision Application is partly allowed on above terms.


 (SHRAWAN KUMAR)
 Principal Commissioner & ex-officio
 Additional Secretary to Government of India

ORDER No. 03/2021-CUS (WZ) /ASRA/

DATED 15.01.2021

To,

1. Shri Dhanesh Parshottam Sori, 6-Shilp Park, Near Panchsil Society, Umanpura, Ahmedabad - 380 013.

Copy to:

2. The Commissioner of Customs, Ahmedabad, Sardar Vallabhai Patel International Airport, Ahmedabad.

3. Sr. P.S. to AS (RA), Mumbai.

4. Guard File.

5. Spare Copy.