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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. 371/33/B/2022-RA

741

Date of issue: ~~01.2024~~

01.02.2024

ORDER NO. 103 /2024-CUS (WZ)/ASRA/MUMBAI DATED 30.01.2024 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 : Mr. Alimiya Shabbir Ulday
Respondent : Pr. Commissioner of Customs, CSI, Mumbai

Subject : Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM- CUSTM-PAX-APP-717/ 2020-21 dated 27.09.2021 [Date of issue: 08 10.2021] [F.No. S/49-1175/2020] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III

ORDER

This Revision Application has been filed by Mr. Alimiya Shabbir Ulday (herein referred to as the 'Applicant') against the Order-in-Appeal No. MUM- CUSTM-PAX-APP-717/ 2020-21 dated 27.09.2021 [Date of issue 08.10 2021] [F.No. S/49-1175/2020] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2.1 Brief facts of the case are that on 11.10.2018, officers at the Chatrapati Shivaji International Airport intercepted the Applicant, holding an Indian passport, who had arrived by Jet Airways Flight from Dubai. During the screening of his checked-in baggage of the Applicant some dark image was noticed and on opening the baggage 01 black burkha, 02 bluetooth speakers, 01 mouth organ, 02 ladies purses and 01 stainless steel flask was recovered. The above items were broken and following suspicious pieces were recovered.

Sr No	Description of the baggage item	Metallic pieces recovered	Weight in grams
1	Bluetooth speakers	02 round shaped black coloured discs	134
2	Steel flask	Silver coloured sheet	60
3	Ladies purses	6 silver coloured thin square shaped rods	80
4	Mouth organ	02 silver coloured strips	26
5	Burkha	Silver coloured beads stitched to burkha	116
6	Mouth organ	02 silver coloured strips	25
			441

2.2 Pursuant to being assayed, the 441 grams of gold of 999% purity and valued at Rs. 12,53,437/- was seized in the reasonable belief that the same were being smuggled into India and hence was liable to confiscation under the provisions of the Customs Act, 1962

3. After following the due process of law, the Original Adjudicating Authority (OAA) i.e. Additional Commissioner of Customs, CSI Airport, Mumbai, vide Order-In-Original (OIO) No ADC/SKR/ADJN/01/2020-21 dated 20.05.2020 ordered for the confiscation of the impugned gold totally weighing 441 grams, valued to Rs. 12,53,437/- under Section 111 (d), (l) & (m) of the Customs Act, 1962. A penalty of Rs. 1,20,000/- was imposed on the Applicants under Section 112(a) and (b) of the Customs Act, 1962.

4. Aggrieved, with this Order, the Applicant filed an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai Zone-III who vide Order-in-Appeal No . MUM- CUSTM-PAX-APP-717/ 2020-21 dated 27.09.2021 [Date of issue 08 10.2021] [F.No. S/49-1175/2020] upheld the order passed by the OAA

5. Aggrieved with the above order of the Appellate Authority, the Applicant has filed the revision application on the following grounds

5.01. That the impugned order is bad in law and unjust;

5.02. That the impugned order has been passed without giving due consideration to the documents on record and facts of the case;

5.03. That the OAA ought to have appreciated that dutiable goods brought by the Applicants is neither restricted nor prohibited;

5.04. That this was the first time that the Applicant had brought this type of goods and there is no previous case against any of them;

5.05. That the respondent had come to the conclusion that the acts and/or omissions on the part of the Applicant was to evade customs duty and the evasion of customs duty can be done only in respect of dutiable goods and not prohibited goods;

5.06. That once the department accepts that the goods are dutiable, the option of redemption of goods as provided under Section 125 of the Customs Act, 1962 will have to be given to the Applicant;

5.07. That a bare perusal of the sub-section (1) of Section 125 of the Customs Act, 1962 makes it crystal clear that the respondent is required to give the notice an option to pay fine in lieu of confiscation in respect of the impugned goods which even as per the respondent are dutiable goods;

5.08. That absolute confiscation of the impugned dutiable goods would mean interpreting or giving a new meaning to the said sub-section (1) of Section 125 of the Customs Act, 1962;

The Applicant has relied upon the following case laws;

- (i) Hargovind Das K Joshi vis Collector of Customs Civil Appeals Nos 139-143 of 1985, decided on 6-1-1987, Absolute Confiscation of Goods by Collector without considering question of redemption on payment of fine although having discretion to do so - Matter remanded to Collector for consideration of exercise of discretion for imposition of redemption fine - Section 125 of Customs Act, 1962
- (ii) Alfred Menezes v/s. Commissioner of Cus..(C.S.I.) Airport, Mumbai. Final Order Nos A/613-614/2008-WBZ/C-II/(SMB) and Stay Order Nos. S/298 299/2008-WBZ/C-II(SMB), dated 1-8-2008 in Application Nos C/Stay/862 and 1063/2008 in Appeal Nos C/531-532/2008 , Power of adjudicating authority under provisions of Customs Act, 1952 to offer redemption fine in lieu of confiscation of prohibited / restricted goods confiscated-Section125(1) Ibid clearly mandates that it is within the power of adjudicating authority to offer redemption of goods even in respect of prohibited goods
- (iii) T. Elavarasan Vs Commissioner of Customs (Airport), Chennai [2011 (266) ELT 167 (Mad)]
- (iv) Yakub Ibrahim Yusuf vis Commissioner of Customs, Mumbai : Final Order No A/362/2010-WBZ/C-II/(CSTB), dated 28-10-2010 in Appeal No. C/51/1996-Mum, prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation - It does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine since they do not cause danger or detriment to health
- (v) Mohini Bhatia vs Commr Of Customs [1999(106) E.L T 485 (Tri-Mum)]
- (vi) Universal Traders vs Commissioner [2009 (240) E.L T. A78 (SC)]
- (vii) Gauri Enterprises vs CC, Pune [2002 (145) ELT (705) (Tri Bangalore)]

- (viii) Shaik Jamal Basha vs Government of India [1997 (91) ELT 277(AP)]
- (ix) VP Hameed vs. Collector of Customs Mumbai 1994(73) ELT 425 (Tri)
- (x) Union of India v/s. Dhanak M. Ramji . Writ Petition Nos. 1397 with 1022 of 2009, decided on 4-8-2009 ; Confiscated goods Redemption of Ownership Tribunal order assailed on the ground that goods could not be released to non-owner- Finding by Tribunal that application for release of goods maintainable Goods not prohibited but became prohibited due to violation of law - Discretion properly exercised by Tribunal in ordering release of confiscated goods on payment of redemption fine.
- (xi) P.Sinnasamy vs. Commr. Of Customs, Chennai [2007(220)ELT 308]
- (xii) A Rajkumari vs. Commr. of Customs (Airport-Air cargo) Chennai [2015(321) E.L.T 540].
- (xiii) Kadar Mydin vs Commissioner of Customs (Preventive), West Bengal [2011 (136) ELT 758]
- (xiv) Sapna Sanjeev Kolhi vs. Commr Of Customs, Airport Mumbai [2008(230) ELT 305]
- (xv) Vatakkal Moosa vs. Collector of Customs, Cochin [1994 (72) ELT (G.O.I)]
- (xvi) Halithu Ibrahim vs CC [2002-TIOL 195 CESTAT-MAD]
- (xvii) Krishnakumari vs CC, Chennai [2008 (229) ELT 222 (Tri Chennai)]
- (xviii) S Rajagopal vs CC, Trichy [2007 (219) ELT 435 (Tri-Chennai)]
- (xix) M. Arumugam vs. CC, Trichirapalli [2007 (220) ELT 311 (Tri-Chennai)]
- (xx) Commr. Of C.Ex & ST, Lucknow vs, Mohd. Halim Mohd. Shamim Khan [2018(359) ELT 265(Tri-All)]-Held that only prohibited gods cannot be released on payment of redemption fine-Gold not prohibited and cannot be confiscated absolutely-Order permitting release of such gold on payment of redemption fine in lieu of confiscation upheld

Under the circumstances, the Applicant prayed that the gold be released under Section 125 of the Customs Act, 1962 on nominal redemption fine alongwith applicable duty and personal penalty be reduced. The Applicant also filed an application for condonation of delay.

6. Personal hearing in the case was scheduled for 19.10.2023. Shri N.J. Heera, Advocate appeared for the personal hearing on the scheduled date on behalf of the Applicant. He submitted that the Applicant brought some gold items. He further submitted that the applicant is not a habitual offender.

He requested to give an option to claim gold on payment of redemption fine and penalty.

7 At the outset, the Government notes that the Applicant has filed for condonation of delay. The Revision Application was filed on 24.01.2022. The date of issue of the Order of the Appellate Authority is 08.10.2021. Based on the date of issue of the said Order of the Appellate Authority, the Applicant was required to file the Revision Application by 07.01.2022 (i.e. taking the first 3 months into consideration) and by 07.04.2021 (i.e. taking into consideration a further extension period of 3 months). The Applicant has accepted that there was a delay in filing the Revision Application from the date of receipt of the order. Thus it is seen that the Revision Application has been filed within the date, after considering the extended period.

7.2. The Applicant in his application for condonation of delay has stated that the revision application could not be filed due to the lockdown in India due to the covid situation and requested that the delay be condoned.

7.3. For understanding the relevant legal provisions, the relevant section is reproduced below

SECTION 129DD. Revision by Central Government.-

(1) The Central Government may, on the application of any person aggrieved by any order passed under section 128A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 129A, annul or modify such order.

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(2) An application under sub-section (1) shall be made within three months from the date of the communication to the Applicant of the order against which the application is being made .

Provided that the Central Government may, if it is satisfied that the Applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.

7.4. From above, it is clear that the Applicant was required to file the Revision Application within 3 months from the communication of the Appellate Order. The delay thereafter, upto 3 months can be condoned.

Since, the Revision Application is filed within the condonation period of three months, and the reason also being genuine, Government condones the delay on the part of the Applicant in filing the application and proceeds to examine the case on merits.

8 The Government has gone through the facts of the case and observes that the Applicant had brought the 441 grams of gold of 999% purity which was recovered from various items and had failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. The Applicant had not disclosed that he was carrying dutiable goods. The gold was of very high purity and was in primary form, indicates that the same was for commercial use. However, after being intercepted, on intelligence, the impugned gold which was cleverly concealed was recovered from the Applicant and the method of carrying the gold adopted by the Applicant clearly revealed his intention not to declare the said gold and thereby evade payment of Customs Duty. Further, the Applicant had cleverly and ingeniously concealed the gold in various items. The nature of concealment reveals the mindset of the Applicant to not only evade duty but smuggle the gold. It also reveals that the act committed by the Applicant was conscious and pre-meditated. The Applicant was given an opportunity to declare the dutiable goods in his possession but having confidence in the nature of his concealment, he denied carrying any gold. Had he not been intercepted, the Applicant would have gotten away with the gold concealed in the cavity of the shaft of the mixer grinder. The confiscation of the gold was therefore justified and thus, the Applicant had rendered himself liable for penal action.

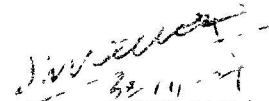
9. The Hon'ble High Court Of Madras, in the case of Commissioner Of Customs (Air), Chennai-I V/s P. Sinnasamy reported in 2016 (344) E.L.T 1154 (Mad.), relying on the judgment of the Apex Court in the case of Om Prakash Bhatia v. Commissioner of Customs, Delhi reported in 2003 (155) E.L.T. 423 (S.C.), has held that "*if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be*

the manner of concealment being clever, conscious and ingenious, type of gold being for commercial use, this being a clear attempt to brazenly smuggle the impugned gold by the Applicant who stated that he was not the owner of the gold, is a fit case for absolute confiscation as a deterrent to such offenders. Thus, considering the facts on record and the gravity of offence, the adjudicating authority had rightly ordered the absolute confiscation of the impugned gold. But for the intuition and the diligence of the Customs Officer, the gold would have passed undetected. The redemption of the gold will encourage non bonafide and unscrupulous elements to resort to concealment and bring gold. Such acts of mis-using the liberalized facilitation process should be meted out with exemplary punishment and the deterrent side of law for which such provisions are made in law needs to be invoked. Government upholds the order of the OAA absolutely confiscating the impugned gold. The absolute confiscation of the gold would act as a deterrent against such persons who indulge in such acts with impunity.

13. Government finds that the penalty of Rs. 1,20,000/- imposed on the Applicant by the OAA under Section 112(a) & (b) of the Customs Act, 1962 is commensurate with the omissions and commissions committed by the Applicant.

14. For the aforesaid reasons, the Government is inclined not to interfere with the Order-in-Appeal No MUM- CUSTM-PAX-APP-717/ 2020-21 dated 27.09.2021 [Date of issue: 08 10 2021] [F.No S/49-1175/2020] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III and upholds the same.

15. The Revision Application is dismissed as being devoid of merit.


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

ORDER NO./03 /2024-CUS (WZ)/ASRA/MUMBAI DATED 30.01.2024

To,

1. Mr. Alimiya Shabbir Ulday, At Post Saigon, Tal Shriwardhan.
2. The Pr. Commissioner of Customs, Terminal-2, Level-II, Chhatrapati Shivaji International Airport, Mumbai 400 099.

Copy to:

1. The Commissioner of Customs (Appeals), Mumbai Zone-III, Awas Corporate Point, 5th Floor, Makwana Lane, Behind S.M.Centre, Andheri-Kurla Road, Marol, Mumbai - 400 059.
2. Shri N.J. Heera, Advocate, Nulwala Building, Ground Floor, 41, Mint Toad, Fort, Mumbai 400 001.
3. Sr. P.S. to AS (RA), Mumbai.
4. File copy
5. Notice Board.

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