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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No. 371/362/B/2022-RA | 933 : Date of Issue : 12.02.24

ORDER NO. 151 /2024-CUS (WZ)/ASRA/MUMBAI DATED 8.2.2024 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. Jafar Mangadn Amoo

Respondent : Pr. Commissioner of Customs, Airport-1, Mumbai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. MUM-
CUSTM-PAX-APP-384-2021-22 dated 30.06.2021 passed by
the Commissioner of Customs (Appeals), Mumbai-III.

ORDER

This revision application has been filed by Mr. Jafar Mandagn Amoo (herein referred to as Applicant) against the Order-in-Appeal No MUM-CUSTOM-PAX-APP-384-2021-22 dated 30.06.2021 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Brief facts of the case are that on 19.2.2019, on the basis of suspicion, the officers of Air Intelligence Unit, CSMI, Mumbai intercepted the applicant, after he cleared himself through Customs Green Channel and took the personal search. Applicant was holding Indian Passport No. G 9441222 and had arrived by Flight No. FZ 445 dated 18.2.2019. During the search, the officer of the Air Customs recovered (i) 28 cartons of Gudam Garam cigarettes valued at Rs.42,000/-and (ii) two yellow colored metals rod (gold) weighing 385 gms valued at Rs. 10,73,592/- collectively valued at Rs.11,15,592/-. The Applicant ingeniously concealed the gold bars and cigarettes totally valued at Rs.11,15,592/-. The Applicant admitted the concealment for earning some money out of the sale proceeds and the goods were bought from his savings for the last several years.
3. The case was adjudicated after completion of the investigation and both the impugned goods were absolutely confiscated under Section 111 (d) (1) and (m) of the Customs Act, 1962 read with The Cigarettes and other Tobacco Products (Racking and Labelling) Amendment Rules, 2014 and The Cigarettes and Other Tobacco Products Act, 2003 (COPTA Act, 2003). Further, penalty of Rs.1,25,000/- was imposed on the applicant under Section 112 (a) & (b) of the Customs Act, 1962.
4. Aggrieved with the Order, the applicant filed an appeal before the Appellate Authority viz Commissioner of Customs (Appeals), Mumbai-III, who vide the impugned Order-in-Appeal, rejected the appeal and upheld the OIO.

5. Aggrieved with the order of the Appellate authority, the Applicant has filed this revision application inter alia on the grounds that;

- 5.1 Applicant having no intention to hide the goods. HE was holding the impugned goods in his hand. When he was asked by the Customs Officers whether he has anything to declare, and his answer was positive. He informed the Officers that he was carrying a round shape gold and some cigarettes for his personal use and wants to pay the duty as applicable. Even after that he was not allowed to the Customs allotted counter to declare the impugned gold before intercepting Officer under Section 77 of The Customs Act, 1962. The applicant has not crossed the Customs barrier.
- 5.2 The Applicant further submits that gold was brought for personal use.
- 5.3 The Respondent ought not to have confiscated the gold absolutely as it is not a prohibited item as per EXIM policy. The absolute confiscation is very harsh.
- 5.4 the Respondent did not appreciate the facts that the gold does not comes under prohibited goods and therefore the Section 125 of The Customs Act, 1962 is attracted. Under the circumstances the absolute confiscation is very harsh.
- 5.5 the Respondent should have not imposed penalty on him when ingredients of Section 112 (a) of The Customs Act, 1962 not proved in this case. The Respondent ought not to have imposed the penalty on the Applicant when there is no mens rea on the part of the Applicant.
- 5.6 The Applicant submits that he is the owner of the goods and claimed ownership before the adjudicating authority and also the investigation has not proved otherwise. Hence goods should be released to the person who claimed ownership of the goods on imposition of duty, moderate fine and penalty.
- 5.7 Applicant requested to set aside the impugned OIA and to allow clearance of goods on payment of duty, fine and penalty.

6 Personal hearing in the case was scheduled on 05.09.2023. Ms. Reema Deshnehare, Advocate for the applicant appeared for personal hearing and submitted that applicant was working in UAE and had brought small quantity of gold for personal use. She further submitted that there was no ingenious concealment and applicant is not a habitual offender. She requested to allow redemption of gold on reasonable fine and penalty for reexport as applicant is NRI and resides in UAE.

7. Government observes that the applicant has filed an application for condonation of delay. Applicant has stated that the OIA was received by him on 12.07.2021 and that there was delay in filing the application due to the disruption caused by COVID. Government observes that the applicant was required to file the revision application within 3 months i.e. by. 12.10.2021. Considering, the further extension of 3 months which can be condoned, the applicant was required to file the revision by 12.01.2022. The Government notes that due to the outbreak of Covid-19 pandemic in March, 2020, the Hon'ble Supreme Court in M.A no. 665 of 2021 (initial order) had extended the period of limitation for any suit, appeal, application or proceeding and had held that the period from 15.03.2020 till 28.02.2022 shall stand excluded. Considering this exclusion, the revision application filed by the applicant on 17.08.2022 falls within the extendable period and hence the Government condones the delay and goes into the merits of the case.

8 **Cigarettes** :- The Government observes that the applicant was carrying 28 cartons of cigarettes in his baggage. The quantum of cigarettes carried was of commercial quantity. The Government observes that despite carrying commercial quantity of cigarettes, the applicant had not declared the impugned goods as required under Section 77 of the Customs Act, 1962. Cigarettes are restricted items as they are hazardous to health. It was incumbent on the applicant to have declared the same upon arrival. The facts of the case reveal

that, a proper written declaration of the impugned goods was required to be made by the Applicant as required under Section 77 of the Customs Act, 1962. However, the applicant had failed to do so. The cigarettes brought were of commercial quantity, thus warranting absolute confiscation of the goods. In view of the aforesaid facts, the Government finds that the absolute confiscation of the goods is justified and therefore liable to be upheld.

9. **GOLD:-** The Government has gone through the facts of the case, and notes that the applicant was attempting to pass through the green channel and had failed to declare the gold in his possession to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. The applicant had been granted an opportunity to declare the goods in his possession. However, he chose not to do so. It is evident that the applicant had not intended to declare the same to Customs. The Government finds that the confiscation of the gold is therefore justified.

10.1. 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 considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods.*” It is thus clear that gold, may not be one of the enumerated goods, as prohibited goods,

still, if the conditions for such import are not complied with, then import of gold, would squarely fall under the definition, “prohibited goods”.

10.2. Further, in para 47 of the said case the Hon’ble High Court has observed *”Smuggling in relation to any goods is forbidden and totally prohibited. Failure to check the goods on the arrival at the customs station and payment of duty at the rate prescribed, would fall under the second limb of section 112(a) of the Act, which states omission to do any act, which act or omission, would render such goods liable for confiscation.....”*. Thus failure to declare the goods and failure to comply with the prescribed conditions has made the impugned gold “prohibited” and therefore liable for confiscation and the Applicants thus liable for penalty.

11. Hon’ble Supreme Court in case of M/s. Raj Grow Impex [*CIVIL APPEAL NO(s). 2217-2218 of 2021 Arising out of SLP(C) Nos. 14633-14634 of 2020 – Order dated 17.06.2021*] has laid down the conditions and circumstances under which such discretion can be used. The same are reproduced below.

71. *Thus, when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.*

71.1. *It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion*

either way have to be properly weighed and a balanced decision is required to be taken.

12 Government notes that the quantity of gold is small and the same was for personal use. The action and demeanor of the applicant indicates that the act of the applicant was to evade duty. Had it not been due to the alertness and diligence of the officers manning the exit gate, the applicant would have gotten away with the impugned gold without discharging the duty. Considering the quantity of gold, applicant not being a habitual offender, allowing redemption of gold would be reasonable and fair.

13. Government finds that the penalty imposed on the applicant is commensurate with the acts of omission and commissions committed and is not inclined to interfere in the same.

14. For the aforesaid reasons, the Government modifies the order passed by the AA only to the extent of allowing the gold weighing 385 grams, valued at Rs. 10,73,592/-, for re-export, to be redeemed on payment of a fine of Rs. 2,00,000/- (Rupees Two Lakhs Only). The absolute confiscation of the 28 cartons of Gudang Garam Cigarettes upheld by the AA is sustained. The penalty of Rs. 1,25,000/- imposed by the OAA and upheld by the AA is also sustained.

15. Accordingly, the Revision application is decided on the above terms.


(SHRAWAN KUMAR)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER NO. 151 /2024-CUS (WZ)/ASRA/MUMBAI DATED 8 2.2024

To,

1. Mr. Jafar Mangadn Amoo, Kaniyampadi House, Thekkli Ferry, Kasargod District. Kerala- 671545.
2. Pr. Commissioner of Customs, Airport-I, Chhatrapati Shivaji International Airport, Terminal - 2, Level - II, Andheri(E), Mumbai - 400099.

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