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SPEED POST



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

F.No. 371/18/B/15-RA

3712

Date of Issue

20.07.2021

ORDER NO. 64/2021-CUS (WZ)/ASRA/MUMBAI DATED 14.07.2021 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 Ibrahim Khaleel

Respondent : Pr. Commissioner of Customs, CSI Airport, Mumbai

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. Mum-CUSTM-PAX-APP-677/2014-15 dated 26.02.2015 passed by the Commissioner of Customs (Appeals), Mumbai-III.

ORDER

This revision application has been filed by Shri Ibrahim Khaleel (herein referred to as Applicant department) against the Order in Appeal No. MUM-CUSTM-PAX-APP-677/2014-15 dated 26.02.2015 passed by the Commissioner of Customs (Appeals), Mumbai- Zone-III.

2. The Officers of Customs intercepted the Applicant at the CSI Airport, Mumbai on 29.09.2013 after the officers had noticed some dark images as his baggage passed through the metal scanner. Examination of his baggage resulted in the recovery of a mobile phone which was unusually heavy. Opening the battery compartment of the mobile phone resulted in the recovery of two gold bars. Personal examination resulted in the recovery of two more gold bars from his wallet carried by him. A total of 449.5 gms of gold valued at Rs. 13,75,918/- ( Rupees Thirteen lakhs Seventy five thousand Nine hundred and eighteen) was recovered from the Applicant.

3. The Original Adjudicating Authority vide its Order-In-Original No. ADC/ML/ADJN/70/2014-15 dated 01.10.2014 observing the nature of concealment and that the Applicant was not the owner of the gold ordered absolute confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962, and imposed penalty of Rs. 1,30,000/- (Rupees One lakh Thirty thousand) on the Applicant.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals), pleading for release of the gold on redemption fine and penalty. The Commissioner (Appeals) vide his order No. MUM-CUSTM-PAX-APP-677/2014-15 dated 26.02.2015 rejected the appeal.

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

5.1 The Applicant is a Nonresident Indian.

5.2 The Applicant is the owner of the said goods.

5.3 The Applicant has originally purchased in Saudi Arabia, the 5 Gold bars, 4 weighing 116 grams and the remaining one weighing 100 grams.

5.4 The Applicant brought in with himself 3 Gold bars weighing 116 grams and one weighing 100 grams but due to an oversight, he produced the Inv of 4 Gold bars, all weighing 116 grams each.

5.5 The Ld. Adjudicating authority has not disputed the authenticity of the Invoice.

5.6 The Ld. Adjudicating authority confiscated the gold bars only on the ground that he has produced one wrong bill of 116 grams instead of 100 grams (The copy of that relevant bill of 100 grams is annexed).

5.7 It is submitted that the Applicant has produced the copies of the relevant invoices along with the letter dated 5/3/14 but still the department did not consider the same while issuing the Show-cause Notice to him on 24/3/2014 and the same was not even relied upon in the Show-cause Notice.

5.8 The Applicant came to know of his mistake only after the adjudication order was passed.

5.9 The relevant copy of the Gold bar weighing 100 grams is being produced along with this statement.

5.10 It is submitted that the mistake on the part of the Applicant was bonafide and not an intentional one.

5.11 The Commissioner of customs (Appeals) in a similar type of case (Karkala Suleiman V/S. The Addl. Commissioner of customs, C.S.I. Airport, Mumbai) has already allowed release of Gold in similar concealment case and cited our so many cases of same Dept. where the Gold was released on Redemption fine and all relevant orders are mentioned in the Appeal order which was duly accepted by the Ld. Commissioner Airport, Mumbai. The same applies in this case too.

5.12 The Applicant relies upon various orders passed by the various authorities in similar type of cases where Nominal Fine and Personal Penalty is imposed (enclosed). The Applicant craves to add or delete any other ground of Appeal or produce any other document/judgment before or during the Personal Hearing.

5.13 The Applicant prayed that the absolute confiscation of the said gold bars may kindly be set aside and the same may kindly be released under section 125 of The Customs Act, 1962.

7. Personal hearings in the case was scheduled in the case on 05.09.2021, 16.10.2019, 29.01.2021, 18.03.2021 and 25.03.2021. Nobody attended the hearing on behalf of the Applicant or the department. The case is therefore being decided on the basis of available records on merits.

8. The Government has gone through the facts of the case. The Respondent was intercepted after his baggage indicated metal concealment. When questioned whether he was carrying any contraband /dutiable goods he replied in the negative. The gold was discovered when the Applicants person and baggage was examined. Two gold bars were ingeniously concealed in the battery compartment of the Mobile phone and two gold bars were recovered from his wallet. The Applicant did not declare the gold as required under section 77 of the Customs Act, 1962, the confiscation of the gold is therefore justified and the Applicant has rendered himself liable for penal action.

9. The Respondent has contended that gold is not a prohibited item. 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 *"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.

12. The Honble Apex Court in the case of Sheikh Mohd. Omer V/s Collector of Customs, Calcutta and others, reported in 1983 (13) ELT 1439 ( S.C. ) has also held that, " ..... *any goods which are imported or attempted to be imported contrary to "any prohibition imposed by any law for the time being in force in this country" is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in Section 111(d) of the Customs Act, 1962 includes restrictions.*". Therefore this contention of the applicants is also not based on correct appreciation of laws held by the Apex court and High Courts. The Hon'ble Supreme Court in the *judgment of Omprakash Bhatia notes " .....that in matter of quasi-judicial discretion, interference by the Appellate Authority would be justified only if the lower authority's decision was illogical or suffers from procedural impropriety."*

15. The Applicant claims that he is a non-resident Indian and eligible to import gold, however has not produced any evidence to support this contention. In his statements he has also submitted that the part of the impugned gold does not belong to him. Further Government contends that concealment of the impugned gold is a major issue while interpreting the scope of section 125 of Customs Act, 1962. Government opines that the manner in which the gold was concealed i.e. in the battery compartment of the mobile phone reveals the intention of the Applicant. It also revealed his criminal bent of mind and a clear intention to evade duty and smuggle the gold into India. Further, the passenger opting to clear themselves through green channel are cleared on the basis of their declaration and only a small fraction of passengers are intercepted for detailed examination. Had the passenger not been intercepted he would have made good with 489.5 grams of gold. The circumstances of the case and the intention of the Appellant was properly considered by the Appellate Authority while upholding absolute confiscation ordered by the original adjudicating authority.

16. It is a matter of record that the ownership of the gold has not been disputed, and ownership of the impugned gold cannot be a factor for allowing

redemption of the gold. However, the issue in the case is the manner in which the impugned gold was being brought into the Country. The option to allow redemption of seized goods is the discretionary power of the adjudicating authority depending on the facts of each case and after examining the merits. In the present case, the manner of concealment being clever and ingenious is a fit case for absolute confiscation as a deterrent to passengers misusing the facility of green channel. Thus, taking into account the facts on record and the gravity of offence, the adjudicating authority had rightly ordered the absolute confiscation of gold and the Appellate authority has rightly upheld the order. In support of this contention, the judgment of Hon'ble Delhi High Court in the case of Jain Exports Vs Union of India 1987(29) ELT753 wherein the Hon'ble High Court has observed that, " *the resort to Section 125 of the C.A. 1962, to impose fine in lieu of confiscation cannot be so exercised as to give a bonanza or profit for an illegal transaction of imports.*". The redemption of the gold will encourage such concealment as, if the gold is not detected by the Custom authorities the passenger gets away with smuggling and if not he has the option of redeeming the 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. The order of the Appellate authority is therefore liable to be upheld.

18. In view of the above the Government upholds the Order of the Appellate authority. Revision Application is accordingly dismissed.

*Shrawan*  
14/07/21  
( SHRAWAN KUMAR )

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

ORDER No. 64/2021-CUS (WZ) /ASRA/

DATED 14.07.2021

To,

1. Shri Ibrahim Khaleel, D No. 1-99-A, Manchila House, Permannur Thokkotu, Mangalore. Karnataka.
2. The Pr. Commissioner of Customs, CSI Airport, Sahar, Mumbai.

Copy to:

1. Shri N.J. Heera, Advocate, Nuiwala building, 41, Mint Road, G.P.O. Fort, Mumbai 400 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.