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SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

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F.No. 371/280/B/WZ/2018-RA/754 : Date of Issue : 06.02.2023

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ORDER NO. 165/2023-CUS (WZ)/ASRA/MUMBAI DATED 31.01.2023  
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.

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Applicant : Shri. Husain Sayed Ahmed Taqvi

Respondent : Pr. Commissioner of Customs, Ahmedabad

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. AHD-  
CUSTM-000-APP-040-18-19 dated and issued on 01.06.2018  
through F.No. S/49-31/CUS/AHD/2017-18 passed by the  
Commissioner of Customs (Appeals), Ahmedabad.

ORDER

This Revision application has been filed by Shri. Husain Sayed Ahmed Taqvi (herein referred to as Applicant) against the Order in Appeal No. AHD-CUSTOM-000-APP-040-18-19 dated and issued on 01.06.2018 through F.No. S/49-31/CUS/AHD/2017-18 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. Brief facts of the case are that the Shri. Husain Sayed Ahmed Taqvi, the applicant, arrived at Sardar Vallabhbhai Patel International Airport, Ahmedabad on 01-08-2016 by Jet Airways Flight No. 9W-519 from Abu Dhabi. The officers, on suspicion, intercepted the passenger and asked him to open the three bags carried by him. The examination of the bags resulted in recovery of following items:

- 1) 6 Blackberry Z30 Mobile Phones
- 2) 10 cartons (each containing 20 packets of 12 cigarettes each) Total 2400 cigarettes Gudang Garam International Cigarettes
- 3) 6 Perfumes
- 4) 14 Burqa (Hijab)
- 5) 10 Ladies Suit Pieces
- 6) PS4 Games Compact Disc

The applicant initially denied having any dutiable goods, he was asked to pass through the Door Frame Metal Detector. On questioning, he removed a total of five yellow metallic bars from his rectum. The Government Approved Valuer valued the 5 bars as gold of 999.0 purity Al ETIHAD-DUBA UAE-10 TOLA marked on them totally weighing 583.800 grams having total market value of Rs. 17,99,855/- and tariff value of Rs. 17,34,668/- Moreover, as the cigarette packets did not contain the mandatory pictorial health warning, it was alleged that the import of these cigarettes was subject to the provisions contained in the Cigarettes and Other Tobacco Products (Packaging and Labeling) Rules, 2008, as amended ('Cigarette Rules'). It was also alleged that the appellant had brought in goods which were over and above the duty free allowance of Rs. 50,000.00

admissible under Rule 3 of the Baggage Rules, 2016 ('Baggage Rules') to the passenger. The impugned goods were seized on 01-08-2016 as they were liable for confiscation under the provisions of Customs Act, 1962.

3. The Original Adjudicating Authority (OAA) viz, Additional Commissioner of Customs, vide Order-In-Original 83/ADC-MLM/SVPIA/O&A/2016 dated 28.04.2017, held as under:

- (i) Ordered absolute confiscation of gold bars under the provisions of Section 111(d), 1. 111(1) and 111(m) of the Customs Act, 1962;
- (ii) ordered absolute confiscation of 10 cartons of Gudang Garam Cigarettes under the provisions of Section 111(d), (i), 111(1) and 111(m) of the Customs Act, 1962;
- (iii) held other goods, totally valued at Rs. 1,14,350/-, as liable for confiscation under the provisions of Section 111(d), (i), 111(1) and 111(m) of the Customs Act, 1962; he gave the appellant an option under Section 125(1) of the Act to redeem the said goods on payment of a redemption fine in lieu of confiscation amounting to Rs. 14,000/- As per Section 125(2) of the Act, the appropriate duty leviable and other charges payable in respect of the goods, leviable at the duty rates applicable to baggage are to be paid before their clearance; and
- (iv) imposed a penalty of Rs. 4,00,000/- under the provisions of Section 112(a) and 112(b) the Customs Act, 1962.

4. Aggrieved with the Order, the applicant filed an appeal before the Appellate Authority viz Commissioner of Customs (Appeals), Ahmedabad who vide his Order-in-Appeal no. AHD- CUSTM-000-APP-040-18-19 dated and issued on 01.06.2018 through F.No. S/49-31/CUS/AHD/2017-18, rejected the appeal and upheld the OIO.

5. Aggrieved with the order of the Appellate authority, the Applicant has filed this revision application limited to the absolute confiscation of gold alongwith the condonation of delay in filing the appeal on the grounds that;

5.1 For condonation of delay, the applicant submitted that he has excellent case on merits. The delay may be condone as his mother was not keeping good health and was unable to travel to meet his Advocate. He requested that delay may be condoned.

5.2 That he was not a Habitual offender and he had purchased the gold, out of his savings; that he was labelled as a carrier only on the basis of his statement wherein his signature as obtained;

Under the above circumstances, the applicant requested to set aside the absolute confiscation and to reduce the penalty

6. Personal hearings in the case was scheduled on 14.11.2022. Shri. Prakash Shingrani, Advocate for the applicant appeared for personal hearing and submitted that gold is not prohibited under Customs Act. He requested to release gold on nominal fine and penalty.

7.1 On going through the Revision Application, Government finds that the appeal filed is only to set aside the absolute confiscation of the impugned gold and to reduce the personal penalty and hence the same is only considered.

7.2 In the instant case, the Applicant had not declared that he was carrying the 5 gold bars totally weighing 583.800 grams and only during the personal search, he admitted to having concealed gold bars in his body cavity ie rectum. It is clear that the applicant had resorted to concealment to smuggle gold and evade duty. This action manifests that applicant had no intention to pay the Customs duty. The Applicant had not declared the impugned gold as required under section 77 of the Customs Act, 1962. The type of concealment adopted to

evade duty is important here. The applicant had pre-planned and selected an ingenious and risky method that he had used to avoid detection and thereby to evade Customs duty. The confiscation of the gold is therefore, justified and thus, the Applicant had rendered himself liable for penal action.

8. 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".

9. 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 'Applicant' thus, is liable for penalty.

10. 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.*

11. Government observes that the manner in which the gold was concealed i.e. inside his own body, reveals the intention of the Applicant. It also reveals his criminal bent of mind and a clear intention to evade duty and smuggle the gold into India. Quantity of gold is not important, the method adopted is of relevance. Also, the gold was in primary form which indicates that the same was for commercial use. The circumstances of the case especially the ingenious concealment which could be risky to the applicant's life, adopted by him, probates that the Applicant had no intention of declaring the gold to the Customs at the airport. The method of concealment indicates that the same was conscious and pre-meditated. All these have been properly considered by the Appellate Authority and the lower adjudicating authority while absolutely confiscating the gold bar.

12. The main 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, ingenious and risky with a clear attempt to smuggle gold, it is a fit case for absolute confiscation which would also be a deterrent to such offenders. Thus, taking into account the facts on record and the gravity of the offence, the adjudicating authority had rightly ordered the absolute confiscation of 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. The order of the Appellate authority upholding the order of the adjudicating authority is therefore liable to be upheld.

13. The Government finds that the penalty of Rs. 4, 00,000/- imposed on the applicant under Section 112(a) & (b) of the Customs Act, 1962 is appropriate and commensurate with the omission and commission committed by the applicant. The Government does not find it necessary to interfere in the penalty imposed by the appellate authority.

14. Government upholds the order of absolute confiscation of the impugned gold bar weighing 583.8 grams passed by the OAA and upheld by the AA. Government does not find it necessary to interfere in the penalty of Rs.4,00,000/- imposed on the applicant under Section 112(a) & (b) of the Customs Act, 1962 by the OAA and confirmed by the AA.

15. In view of the above, the Government upholds the order passed by the appellate authority.

16. The Revision Application filed by the applicant is dismissed on the above terms.

  
31/1/23  
(SHRAWAN KUMAR)

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

ORDER NO. \ 65 / 2023-CUS (WZ)/ASRA/MUMBAI DATED 31.01.2023

To,

1. Shri. Husain Sayed Ahmed Taqvi, Flat No. C/101, Goregaon Gaondevi SRA CHS Ltd. M. G. Road, Goregaon (West), Mumbai 400104.
2. The Principal Commissioner of Customs, Custom House, Navrangpura, Ahmedabad-380009

Copy to:

1. Shri. Prakash Shingrani, Advocate, 12/334, Vivek, New MIG Colony, Bandra (East), Mumbai - 400 051.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.