



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

F.No. 373/30/B/15-RA / 4716

Date of Issue 02.09.2021

ORDER NO. 193/2021-CUS (WZ)/ASRA/MUMBAI DATED 25.08.2021 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 Abdul Kareem

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal.C. Cus. No. 1874/2014 dated 14.10.2014 passed by the Commissioner of Customs (Appeals), Chennai.

ORDER

This revision application has been filed by Shri Abdul Kareem (herein after referred to as the Applicant) against the Order in appeal C. Cus. No. 1874/2014 dated 14.10.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case is that the applicant arrived at the Chennai International Airport on 12.04.2014 and had declared one Samsung television and one Sony home Theater valued at Rs, 25,000/- on his declaration card. As his shoes appeared heavy and its examination resulted in the recovery of 2 gold bars totally weighing 420 gms valued at Rs. 12,47,820/- (Rupees Twelve lacs Forty seven Thousand Eight hundred and twenty).

3. The Original Adjudicating Authority vide Order-In-Original No. 506/2014-dated 05.06.2014 ordered absolute confiscation of the impugned goods under Section 111 (d) and (l) of the Customs Act,1962 and imposed penalty of Rs. 1,25,000/- (Rupees One Lakh Twenty five thousand) under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus. No. 1874/2014 dated 14.10.2014 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 Order passed by the Learned Joint Commissioner of Customs and the order passed by the Learned Commissioner of Customs (Appeals) confirmed the order passed by the Learned Joint Commissioner of Customs is against law, weight of evidence and probabilities of the case.

5.2 The Revision Petitioner submits that he has brought gold bars for making jewellery for his wife and children and there is absolutely no profit motive in bringing the gold.

5.3 The Revision Petitioner further submits that the gold was given to him by his close relatives and friends for making jewellery for his wife and children.

5.4 Revision Petitioner further submits that even according to the order the Revision Petitioner had opted red channel exhibiting himself as having dutiable goods.

5.5 The Revision Petitioner further submits that he was not given a chance to make a declaration.

5.6 It is submitted that this is a first visit abroad. He has brought Samsung TV and Sony Home Theatre alone and he has not brought any commercial goods.

5.7 The Learned Joint Commissioner ought to have granted free allowance to the Revision Petitioner.

5.8 In any event the order of absolute confiscation of the gold bars is harsh and severe.

5.9 It is submitted that the personal penalty of Rs.1,25,000/- is also severe.

Under these circumstances, the Revision Petitioner prayed for setting aside the order of absolute confiscation and order for re-export or release of the gold and grant free allowance to the Revision Petitioner and order for the reduction of personal penalty and thus render justice.

6. A personal hearing in the case was scheduled in the case on 04.07.2018, 04.03.2021, 08.04.2021 and 16.07.2021. Advocate for the Applicant Shri M. A. Abdul Huck, Advocate for the Applicant vide his letter dated 14.07.2021 informed that he is unable to arrange a virtual mode of personal hearing and was also unable to come for the hearing. He submitted that the case may be decided on the basis of available records.

7. The Government has gone through the facts of the case. The impugned gold cannot be termed as bonafide baggage goods. The Applicant did not declare the gold as required under section 77 of the Customs Act,1962. When he was questioned whether he was carrying gold or jewelry he replied in the negative. The gold bars were discovered only during personal examination and due diligence of the Customs officers. The Applicant has claimed that he had opted red channel exhibiting himself as having dutiable goods and that he was not given a chance to make a declaration. Government however observes that the Applicant had proceeded to the red channel as he had declared one Samsung television and one Sony home theater valued at Rs, 25,000/- on his declaration card. The impugned

gold bars were recovered from his shoes, the concealment was definitely ingenious and would not be detected without special efforts. The manner of concealment clearly indicates that there was no intention to declare the gold and therefore the said offence was premeditated and clearly indicates mensrea. The gold bars were discovered only when the Respondent was thoroughly checked on suspicion. The Applicant had avoided declaring 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. Government notes that gold is a prohibited item whose import is restricted. 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.), 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 liable for penalty.

10. Government also observes that the manner in which the gold was concealed i.e. in the footwear worn by the passenger, reveals the intention of the respondent. It also revealed his criminal bent of mind and a clear intention to evade duty and smuggle the gold into India. The Applicant was ineligible for import of gold. Further, the passenger revealed that he carried a 46' Samsung TV and an home theatre system but did not reveal that he had also brought gold bars concealed in his footwear. The circumstances of the case and the intention of the Applicant was properly considered by the Appellate Authority while upholding the order of the original adjudicating authority and confiscating the gold bars absolutely. It is also a matter of record that the Applicant had initially stated that he was a carrier for monetary consideration and did not attend the hearings before the original adjudicating authority.

17. Government further observes that the option to release the gold on redemption fine under section 125 of the Customs Act, 1962 lies with the

Adjudicating authority. There is a difference between a non-declaration by the passenger and smuggling by ingenious concealment. 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 and ingenious is a fit case for absolute confiscation as a deterrent to passengers. The 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 impugned 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 and the Revision Application is liable to be dismissed.

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


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

ORDER No. 93/2021-CUS (SZ) /ASRA/ MUMBAI

DATED 25/08/2021

To,

1. Shri Abdul Kareem , No. 49B, Sasirekkamma Nagar, Kodungaiyur, Chennai - 600 18.
2. The Commissioner of Customs, Customs House, Rajaji Salai, Chennai.

Copy to:

1. Shri, M. A. Abdul Huck, Advocate, 35 Jones Street, First floor, Mannady, Chennai 600 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.