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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. 373/137/B/16-RA / 5922

Date of Issue 16.09.2021

2/2/2021 -
ORDER NO. CUS (SZ)/ASRA/MUMBAI DATED 26.08.2021 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 Idroos Thowfeek

Respondent : Commissioner of Customs, Kempegowda International
Airport, Bangalore

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. 374
- 376 dated 21.04.2016 passed by the Commissioner of
Customs (Appeals), Bangalore.

ORDER

This revision application has been filed by Shri Idroos Thowfeek (herein referred to as Applicant) against the order No. 374 - 376 dated 21.04.2016 passed by the Commissioner of Customs (Appeals), Bangalore.

2. On the basis of specific intelligence the Officers of Air intelligence unit kept a discreet watch and intercepted Shri Idroos Thowfeek a Sri Lankan citizen after he passed the door frame metal detector. It was seen that the baggage declaration slip had not declared any dutiable or prohibited goods. Examination of his person resulted in the recovery of two gold chains and two gold bracelets, one gold chain was worn by him and the other alongwith the bracelets was recovered from his pant pockets.. The entire gold weighed 650.50 grams valued at Rs. 17,31,631/- (Rupees Seventeen lacs Thirty one thousand Six hundred and Thirty one).

3. After due process of the law vide Order-In-Original No. 24/2015 dated 24.01.2015 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 3,50,000/- (Rupees Three lacs Fifty thousand) under Section 112 (a) of the Customs Act,1962. An additional penalty of Rs. 1,75,000/- (Rupees One lac Seventy five thousand) was also imposed under Section 114AA of the Customs Act,1962.

4. Aggrieved by this order the Respondent filed an appeal with the Commissioner of Customs (Appeals), The Commissioner (Appeals), Bangalore vide his order no. 374 - 376 dated 21.04.2016 rejected the Appeal of the Applicant.

5. Aggrieved with the above order the Applicant department has filed this revision application stating that the order of the Commissioner (Appeal) is not legal nor proper for the following reasons;

5.1 The order passed by the Respondent is opposed to the facts of the case and one which can be termed as one not appreciating the legal requirements and hence oppose to the law.

5.2 The respondent as erred in passing the impugned order on the basis of presumptions. The applicant has retracted his statement given, in his bail application, that no show-cause notice was issued and the matter was adjudicated very hastily without giving a proper opportunity to the appellant to effectively reply and adduce properly to the allegation alleged against him. Thus gravely violating the principles of natural justice.

5.3 The respondent has failed to appreciate that the goods under seizure were gold ornaments worn by the appellant/passenger where one gold chain was worn around the neck. And another gold chain and two bracelets was kept in his trousers pocket and on arrival at Bangalore from the flight, he had removed the one chain and two bracelets and had kept it in his trousers pocket only because of his safety. The Appellate authority should have noted that there was no concealment of the gold jewelry as the same was admittedly carried by the applicant in the pocket of the garment worn by him just like any normal person.

5.4 The applicant submits that he is a foreign tourist and had no knowledge that he cannot wear or bring gold ornaments. Neither did the Customs officers tell him nor warn him, but just seized the gold and arrested him. The foreign tourist entering into India are in a boundless sea of uncertainty as to whether same is prohibited or not. He informed the customs officers that he is ready to pay the applicable duty and if not the same may be retained by then and return it back while he was leaving the country/ India. But the officers failed to listen.

5.5 The applicant submits that the gold chains and gold bracelets is of his personal use and which is of a crude finish, is a fashion because it gives a look of antique. further more, there being no prohibition to the effect that a foreign tourist arriving in India cannot wear gold ornaments on its person or wear gold ornaments of 24 carat purity. At most, duty payable could have been levied- even the Baggage Rules, 1998 do not prohibit a foreign tourist entering into India form wearing a gold chain or other gold jewellery.

5.6 The Applicant submits that under section 125 of the customs Act When even confiscation of any good is authorized by this act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or where such owner is not known, the person from whose possession or custody been such goods have seized.

5.8 The Revision Applicant relied on case laws applicable to the case and stated that the entire case is based on suspicion, assumption and presumption and on surmise and conjunctions. The Applicant prayed for setting aside the Appellate order be set aside and grant consequential relief by way of releasing the goods and thus render justice.

6. In view of the above, a personal hearing in the case were scheduled on 08.12.2020, 22.12.2020, 25.02.2021, 20.04.2021 and 27.04.2021. 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.

7. The Government has gone through the case records. It is observed that the respondent did not declare the gold as required under section 77 of the Customs, Act, 1962 and was intercepted at the exit gate, therefore the confiscation of the gold is justified.

8. However, the Applicant is a Sri Lankan citizen, and one gold chain was worn by him and the other gold chain and two bracelets were recovered from the pant pockets. The gold therefore was not ingeniously concealed. The ownership of the gold is not disputed. Being a foreign citizen the applicant is not supposed to know Indian law. There are no allegations that the applicant is a habitual offender. The question of "eligibility" under notification 12/2012 dated 17.03.2012 arises only if the Applicant desires to import gold on concessional rate of duty and being a foreign citizen the question of eligibility to import gold therefore does not apply. The Government therefore notes that non-declaration of gold jewelry worn on person by a foreign citizen does not justify absolute confiscation of the gold.

9. Further, there are a number of judgments wherein the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 requires it to be exercised, especially when it involves foreigners who are not supposed to be aware of the rules involved in gold imports. The right of a foreign national to wear gold ornaments while coming to India is reiterated by the Hon'ble High Court of Kerala in *Re. Vigneshwaran Sethuraman Vs UOI*; 2014 (308) ELT 394 (KER.), further stating that *neither the Customs Act 1962 nor the baggage rules 1998, stipulate that the foreign tourist cannot wear gold ornaments on its person - Further, no such warning is provided to foreign tourist, thus, foreign tourists entering India are in a boundless sea of uncertainty as to whether the same is prohibited or not..... "In the absence of any prohibition by the Act or any other law to the effect that a common tourist arriving in India cannot wear gold ornaments of 24 carat purity, clause (d) of section 111 could not have been invoked to confiscate the gold chain worn by the petitioner."*

10. Under the circumstances, it appears that the said case is more a case of non-declaration than a covert attempt at smuggling gold, the absolute confiscation of the gold is therefore harsh and is required to be set aside and the impugned gold has to be allowed redemption for re-export on payment of suitable redemption fine and penalty. In addressing the issue of penalty under section 114AA of the Customs Act, 1962, Government relies on the

observations of the Hon'ble High Court of Karnataka in the case of Khoday Industries Ltd. Vs UOI reported in 1986(23)ELT 337 (Kar), has held that "*Interpretation of taxing statutes - one of the accepted canons of Interpretation of taxing statutes is that the intention of the amendment be gathered from the objects and reasons which is a part of the amending Bill to the Finance Minister's speech*".

11. In view of the above the objective of introduction of Section 114AA in Customs Act as explained in para 63 of the report of the Standing Committee of Finance (2005-06) of the 14th Lok Sabha is reproduced below;

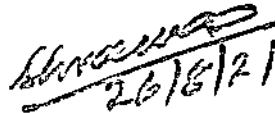
" Section 114 provides for penalty for improper exports of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulations could escape penal action even when no goods were actually exported The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declaration, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to five times the value of the goods. A new Section 114AA is proposed to be inserted after Section 114A."

Government therefore observes, penalty under Section 112 is imposable on a person who has made the goods liable for confiscation. But there could be situation where no goods ever cross the border. Since such situations were not covered for penalty under Section 112/114 of the Customs Act, 1962, Section 114AA was incorporated in the Customs Act by the Taxation Laws (Amendment) Act, 2006. Hence, once the penalty is imposed under Section 112(a), then there is no necessity for a separate penalty under section 114AA for the same act. The penalty of Rs. 1,75,000/- (Rupees One lakh Seventy five thousand) imposed under section 114AA of the Customs Act,1962 is liable to be set aside.

12. In view of the above facts, The Government sets aside impugned Order in Appeal, the impugned gold valued at Rs. 17,31,631/- is allowed to be

redeemed for re-export on payment of Rs. 8,50,000/- (Rupees Eight Lakhs Fifty Thousand). The penalty of Rs. 3,50,000/- (Rupees Three lacs fifty thousand) imposed is appropriate. The penalty of Rs. 1,75,000/- (Rupees One lac seventy five thousand) imposed under section 114AA of the Customs Act, 1962 is set aside.

13. Revision application is disposed of on above terms.


26/8/21
(SHRAWAN KUMAR)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 212/2021-CUS (SZ) /ASRA/MUMBAI DATED 26.08.2021

To,

1. Shri Idroos Thowfeek, 71, Colombo Street, Kandy, Sri Lanka .
2. The Commissioner of Customs, Kempegowda International Airport, Bangalore.

Copy to:

1. Shri B. S. Girish, No.2, 1st Floor, 1st Cross, 8th Main, Vasanthnagar, Bangalore-560052,
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.