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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. 371/29-A/B/16-RA

5226

Date of Issue

16.09.2021

ORDER NO. ^{214/2021-} CUS (WZ)/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 Ramesh Kumar

Respondent : Commissioner of Customs, Ahmedabad.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. AHM-
CUSTM-000-APP-254-15/16 dated 09.12.2015 passed by
the Commissioner of Customs (Appeals), Ahmedabad.

ORDER

This revision application has been filed by the Shri Ramesh Kumar (herein referred to as Applicant) against the order No. AHM-CUSTOM-000-APP-254-15/16 dated 09.12.2015 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Ramesh Kumar at the SVP International airport as the scrutiny of his passport revealed that he was returning to India from Dubai after a short visit. The Applicant when directed to pass through the metal detector it indicated presence of metal below his knee area. The personal examination resulted in the recovery of two gold strips wrapped around his ankles totally weighing 676 grms and valued at Rs. 16,79,518/- (Rupees Sixteen lakhs Seventy nine thousand Five hundred and eighteen).

3. After due process of the law vide Order-In-Original No. 43/JC-AK/SVPIA/O&A/2015 dated 20.03.2015 the Original Adjudicating Authority confiscated the gold absolutely and imposed a penalty of Rs. 3,00,000/- (Rupees three lakhs) was imposed under section 112 a & b of the Customs Act, 1962 on the Applicant. A penalty of Rs. 1,50,000/- (Rupees One lakh Fifty thousand)was also imposed under section 114AA of the Customs Act, 1962 on the Applicant..

4. Aggrieved by this order the Respondents filed an appeal with the Commissioner of Customs (Appeals), The Commissioner (Appeals) vide his order AHM-CUSTOM-000-APP-254-15/16 dated 09.12.2015 rejected the Appeal.

5. Aggrieved with the above order the Applicant has filed this revision application interalia on the grounds that;

5.1 Appellate authority as well as Ld. adjudicating authority has grossly erred in reaching to the above conclusions, as Rule 6 contains provisions relating to passenger who while returning to India shall be allowed clearance free of duty jewellery in his bonafide baggage to the extent mentioned in column 2) of Appendix D. Secondly, the allowance, is duty free

to a particular extent and the passenger crosses the permissible limit, he is required to discharge duty on the said jewellery.

5.2 Thus, the appellant authority and the adjudicating authority have erred in reaching to the conclusion that the gold recovered from him was pure gold. which is not permissible and it cannot be considered as a bonafide baggage under the Customs Baggage Rules, 1998.

5.3 The appellate authority and the adjudicating authority has also erred in making a distinction between jewellery and pure gold in as much as the jewellery mentioned in rule 6 does not make an distinction between pure gold and jewellery and jewellery referred to in rule 6 relates to gold but it does not specify the purity of gold. Thus, the appellate authority and the Ld. adjudicating authority have made presumptions on the gold concerned in the present appeal and to make it liable for confiscation. The Order-in-appeal as well as O in O deserves to be quashed on this ground alone.

5.4 It is a fact that the revisionist had not made a declaration of gold in the declaration form as he had a bonafide belief that only the items contained in the baggage have to be declared and as such he had not declared the gold in the baggage form. Further, the appellate authority and the adjudicating authority have also not considered the fact that the revisionist is not a regular offender and as such bonafide of the revisionist cannot be doubted.

5.5 It is also categorically held by the adjudicating authority that the items contained in the bag were only required to be declared and the gold was worn by him and accordingly the same was not declared by the revisionist. Further, the revisionist says and submit that the gold was worn as anklet only to ensure safety of gold.

5.6 The deliberations on the purport and intent of the said Section 114AA as contained in paragraph 62 to 66 of the 27th report of Standing Committee on Finance (2005-2006), Fourteenth Lok Sabha, on the Taxation Laws (Amendment) Bill, 2005. The clause 24 of the said report dealt with insertion of Section 114AA of the Customs Act, 1962. These facts indicate imposition of penalty vide Section 114AA is not justified.

5.7 The Ld. Authorities has made an attempt to discuss the restrictions imposed by Government of India and Reserve bank of India on import of gold to curb illegal import and smuggling but has at the same point of time

failed to mention the details of instructions /circulars which direct for absolute confiscation of gold brought in by the passenger.

5.8 Based on the above grounds, the revisionist prays before the Hon'ble Addl. Secretary/Joint Secretary, Department of Revenue to set aside the impugned order-in-original as well as order in appeal by providing the revisionist to release the confiscated gold in lieu of redemption fine and set aside the order absolutely confiscating of the confiscated gold and to quash the order of penalty upon the revisionist or pass any orders which consequential relief and thus render justice.

8. Accordingly personal hearings in the case were scheduled on 26.02.2021. Shri Rahul Raheja, Advocate appeared online on behalf of the Applicant. He reiterated his submissions and requested to allow redemption of the goods. Nobody attended the hearing on behalf of the Respondent department.

9. The Government observes that the Applicant had gone abroad for a short visit and the gold was brought in the form of strips and wrapped around the ankle. A proper declaration was not filed by the Applicant as required under section 77 of the Customs Act, 1962 and therefore the confiscation of the gold is justified.

10. Government notes, in a recent judgement by the Hon'ble Supreme Court in the case of M/s Raj Grow Impex and others Vs UOI states "when it comes to discretion, the exercise thereof has to be guided by law; according to the rules of reason and justice; and has to be based on the relevant considerations.....such an exercised cannot be based on private opinion." Government notes that there is no past history of such offence/violation by the Applicant. The impugned gold was concealed but not ingeniously. The applicant claims ownership of the gold and its ownership is not disputed. The quantity of gold is small and not commercial in nature. The original adjudicating authority has absolutely confiscated the gold treating it as ingenious concealment. Manner of concealment alone cannot be a sole ground for exercising discretion. Further, concealment itself in the instant case cannot be said to be ingenious. Thus Government opines that the absolute confiscation is harsh and a more reasonable approach would be to allow redemption on suitable fine and penalty. The Apex court in the case of Hargovind Dash Vs

Collector of Customs 1992 (61) ELT 172 (SC) and the several other cases has pronounced that a quasi judicial authority must exercise discretionary powers in a judicious manner and not in arbitrary manner.

11. Under the circumstances, Government would like to take a reasonable view in the matter and release the impugned gold 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*".

12. 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 impossible 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. 1,50,000/- (Rupees One lakh Fifty thousand) imposed under section 114AA of the Customs Act,1962 is liable to be set aside.

13. In view of the above facts, The Government sets aside impugned Order in Appeal, the impugned gold valued at Rs. Rs. 16,79,518/- is allowed to be redeemed on payment of Rs. 8,25,000/- (Rupee Eight lakhs Twenty five thousand). The penalty of Rs. 3,00,000/- (Rupees Three lacs) imposed is appropriate. The penalty of Rs. 1,50,000/- (Rupees One lakh Fifty thousand) imposed under section 114AA of the Customs Act, 1962 is set aside.

14. Revision application is disposed of on above terms.

Shrawan
26/8/21
(SHRAWAN KUMAR)

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

ORDER No 214/2021-CUS (WZ) /ASRA/MUMBAI

DATED 26/08.2021

To,

1. Shri Ramesh Kumar, Near Bal Vikssh School, Village Jallalpur Kalan, PO Intal Kalan, Jind, Haryana - 126102.
2. The Commissioner of Customs, Customs House, Near All India Radio, Navrangpura, Ahmedabad - 380 009.

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