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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. 371/21/B/15-RA / 5332

Date of Issue 17.09.2021

ORDER NO.226/2021-CUS (WZ)/ASRA/MUMBAI DATED 08.09.2021 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 Ilyas Ismail Museji Bhana

Respondent : Pr. Commissioner of Customs, Mumbai

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal MUM-CUSTOM-PAX-APP- 648 & 649/14-15 dated 30.01.2015 Commissioner of Customs (Appeals), Mumbai, Customs – Zone III.

ORDER

This revision application has been filed by Shri Ilyas Ismail Museji Bhana (hereinafter referred to as Applicant) against the Order in Appeal No. MUM-CUSTM-PAX-APP- 648 & 649/14-15 dated 30.01.2015 passed by Commissioner of Customs (Appeals), Mumbai, Customs – Zone III.

2. The brief facts of the case are that, officers of Customs intercepted the Applicant at the C. S. International Airport, Mumbai on 24.11.2012 after he had cleared himself through the green channel. When questioned whether he was carrying any contraband /dutiable goods he replied in the negative. The officers then conducted a personal examination and recovered a white coloured waste belt tied below the abdominal region. The officers recovered 05 gold bars weighing one kg each in pockets of the waist belt. The gold bars totally weighed 5 kgs were valued at Rs. 1,55,67,750/- (Rupees One crore Fifty five lakhs Sixty seven Seven hundred and fifty).

3. The Original Adjudicating Authority vide its Order-In-Original No. 16/02.05.2015 observed that such ingenious concealment merits absolute confiscation and ordered absolute confiscation of the gold under Section 111 (d) and (l) of the Customs Act, 1962, and imposed penalty of Rs. 40,00,000/- (Rupees Forty lakhs lacs) under section 112 (a) and (b) of the Customs Act, 1962. A penalty of Rs. 10,000/- (Rupees Ten Thousand) was also imposed under section 114 AA 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- 648 & 649/14-15 dated 30.01.2015 rejected the appeal.

5. Aggrieved with the order of the Appellate authority, the Applicant has filed this revision application being aggrieved by the order of the Appellate authority the Applicant has filed this Revision Application praying for release of the impugned gold bars for redemption, placing reliance on same orders wherein option of redemption has been granted.

6. Personal hearings in the case was scheduled in the case on 16.03.2020, 23.03.2021, 16.07.2021, 20.07.2021. Nobody attended the hearing on behalf of the Applicant nor the department. The case is therefore being decided on the basis of available records on merits.

7. The Government has gone through the facts of the case. The Applicant was intercepted as he was walking out after having cleared himself through the green channel. When questioned whether he was carrying any contraband /dutiable goods he replied in the negative. The gold was discovered when a personal search of the Applicant was carried out. The gold was confiscated absolutely by the original adjudicating authority, and the order was upheld by the Appellate authority.

8. The Applicant has prayed for release of the gold bars. Government notes that the quantity of gold is 5 kgs and the Applicant is not the owner of the gold. The Applicant is not an eligible passenger to import gold. The Applicant has in his statement admitted that he was working with an smuggling cartel and was caught in the act. He has accepted to work as a carrier for monetary considerations. All the travel expenses including the fare and stay of the Applicant has been paid for by the smuggling cartel. The Applicant has also admitted that he has smuggled 3 kgs of gold bars under similar conditions earlier and has succeeded in getting away without being detected by the customs authorities. The facts of the case thus reveal that this is not his first attempt at smuggling gold. Government also notes that the actual owners of the gold have been named by the Applicant but they have not come forward to claim the gold. Under the circumstances the original adjudicating authority has taken an informed decision in confiscating the subject goods absolutely and imposed personal penalty, the Commissioner (Appeals) has upheld the decision.

9. 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 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 therefore notes that this an outright smuggling case and reveals a clear intention to evade duty and smuggle the gold into India with clear disregard for the rules of the country. Had the passenger not been intercepted he would have made good with smuggling of five kilograms of gold. These circumstances of the case and the intention of the Appellant must have weighed in the minds of Original adjudicating authority for absolute confiscation and not allowing him option to redeem the seized goods on payment of fine and penalty. 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. Thus, taking into account the facts on record and the gravity of offence, the adjudicating authority had ordered the absolute confiscation of gold which has been upheld by the appellate authority. In the instant case, the Applicant was fully aware and involved in the smuggling racket, intended to smuggle the gold without declaration using the facility of the green channel.

11. In a case pertaining to smuggling, the Hon'ble High Court of Rajasthan in the case of Syed Mohammad Zama Nis State of Rajasthan [2015 (320) E.L.T. 431 (Raj)] held that — "*When question of adverse effect on the economy of the nation is at stake, the relevant provisions of law must be interpreted in a way which helps to curb the menace rather which encourages it*". Further, The redemption of the gold will encourage such illegal and concealed smuggling 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 should be meted out with exemplary punishment and the deterrent side of law needs to be invoked in such cases. The order of the Appellate authority is therefore liable to be upheld, and the revision application is liable to be dismissed. The Government therefore does not find any infirmity in the order of absolute confiscation and the same does not need any interference. The Order of absolute confiscation of the Appellate authority is therefore liable to be upheld.

12. Government however 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. 10,000/- (Rupees Ten thousand) imposed under section 114AA of the Customs Act,1962 is liable to be set aside.

13. In view of the above the Government upholds the order of absolute confiscation of the Appellate authority. Penalty of Rs 40,00,000/- (Rupees Forty lakhs lacs) imposed under Section under section 112 (a) and (b) of the Customs Act, 1962 is also upheld. The penalty of Rs. 10,000/- (Rupees Ten thousand) imposed under section 114AA of the Customs Act,1962 is set aside.

14. The revision application is disposed of accordingly.

Shrawan
8/9/21
(SHRAWAN KUMAR)

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

ORDER No226/2021-CUS (WZ) /ASRA/MUMBAI

DATED 08.9.2021
2021

To;

1. Shri Ilyas Ismail Museji, Patelwadi, Junagam, At Post Kosamba, R.S. Tal. Mangrol, Dist:- Surat, Gujarat 394 120.
2. The Commissioner of Customs, CSI Airport, Andheri (East) Mumbai 400 059.

Copy to:

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2. ~~Sr. P.S. to AS (RA), Mumbai.~~
3. ~~Guard File.~~
4. Spare Copy.