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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. 373/111/B/2017-RA / 3229 : Date of Issue 20.08.2022

ORDER NO. 226/2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED 25.07.2022
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. Virender Verma

Respondent : Commissioner of Customs, Cochin International Airport,
Custom House, Nedumbassery, Cochin - Pin : 682009.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
09/2017 dated 28.04.2017 {[DOI : 12.05.2017],
[F.No.C27/C27/12/DRI/2017/AU-CUS]} passed by the
Commissioner of Customs (Appeals), Cochin - 682 009.

ORDER

This revision application has been filed by Shri. Virender Verma (herein referred to as the Applicant) against the Order-in-Appeal No. 09/2017 dated 28.04.2017 ([DOI : 12.05.2017], [F.No.C27/C27/12/DRI/2017/AU-CUS]) passed by the Commissioner of Customs (Appeals), Cochin – 682 009.

2. The DRI Officers had on 30.09.2015, intercepted the applicant at the exit gate of the arrival hall of Cochin International Airport where he had arrived from Dubai via Mumbai onboard Air India Flight AI-054/30.09.2015. The said passenger had made a 'nil' declaration in the Customs declaration form filed by him and had walked through the green channel. On being asked about possession of any dutiable or prohibited goods, he had replied in the negative. Search of the baggage of the applicant led to the recovery of 17 nos of gold rods of 24 carat purity, totally weighing 3644.200 gms and valued at Rs. 87,71,935/- . The gold had been melted and converted into rods which thereafter, had been ingeniously concealed as a part of the door tower bolts and had levers and screws fitted thereon. Simultaneously, the Officers in similar manner had intercepted two more passengers from the same flight viz, Shri. Karamvir Sirohi and Shri. Ajay Kumar. Investigations revealed that the applicant and the other two passengers were accomplices. The two passengers had travelled as domestic passengers from Mumbai in the same flight and were to assist the applicant in carrying the gold. In this case, for some unknown reason, the applicant had been unable to hand over his baggage containing the gold. The applicant and the two passengers had admitted to have smuggled gold in similar manner in the past. The applicant had travelled in Air India AI-984 from Dubai to Mumbai and at Mumbai was transited to AI-054 for onward connection to Cochin. The applicant and the other two passengers too had boarded the Air India flight AI-054 at Mumbai for travel to Cochin. The other two persons were travelling as domestic passenger on AI-054. Investigations

revealed that applicant was involved with these two persons and had admitted to his role in the act of smuggling the gold to India.

3. After, due process of law, the Original Adjudicating Authority (OAA) viz, Addl. Commissioner of Customs, Cochin vide Order-In-Original No.300/2016 dated 09.11.2016, issued through F.No. S67/DRI/01/2016-17 CCU CUS DOI : 11.11.2016, ordered the absolute confiscation of the 17 nos of gold rods, totally weighing 3644.200 gms and valued at Rs. 87,71,935/- (International Value) under Section 111(d), (1) and (m) of the Customs Act 1962 and imposed a penalty of Rs. 5,00,000/- on the applicant under Section 112(a) of the Customs Act 1962 and also imposed a Penalty of Rs.3,00,000/- each on the two other accomplices, under Section 112(b) of the Customs Act 1962.

4. Aggrieved by this Order-In-Original, the applicant filed an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Cochin – 682 009 who vide his Order-in-Appeal No. 09/2017 dated 28.04.2017 {[DOI : 12.05.2017], [F.No.C27/C27/12/DRI/2017/AU-CUS]} did not find it necessary to interfere in the Order passed by the OAA.

5. Aggrieved by the above Order-in-Appeal, the applicant has filed a revision application on the following grounds of revision,

- 5.01. that the impugned order is illegal and improper and hence, unsustainable in law.
- 5.02. that the adjudicating authority and the appellate authority had failed to note that the Applicant had never claimed the gold which was allegedly seized as he was not the owner of those gold bars.
- 5.03. that the adjudicating authority had not applied his mind and not appreciated, analysed and discussed the issue raised;
- 5.04. that the Applicant and others had not denied the alleged incident entirely, but raised the contention that the alleged sequence of events had not occurred in the manner and nature as had been put forward by the Investigative Agency and the appellate authority had discarded his contention without assigning any reason at all,

- 5.05. that the adjudicating authority had not been aware that the Applicant had retracted the statement dtd. 30/9/2015 at the first opportunity; that the said statement has no evidentiary value, unless it was corroborated with substantive evidence.
- 5.06. that the statement dtd. 30/9/2015 had been recorded when the Applicant was under the custody of the DRI officers.
- 5.07. that the statement was recorded in English language, which the Applicant is not conversant with.
- 5.08. that the Applicant had not raised any objection against confiscation or raised any claim over the gold allegedly seized from the baggage of the co-passenger.
- 5.09. that the investigating authority had not made any effort or investigation to find out the source of the seized gold and also to find out the person who had handed over the two cardboard boxes to the applicant.
- 5.10. that the OAA had discarded the entire contentions raised by Applicant; the OAA had not adverted to the materials which had been pointed out
- 5.11. that pertinently, the Applicant did not have any criminal antecedents;
- 5.12. that grave prejudice was done to the Applicant on account of the fact that the Adjudication was done by a different Authority whereas the investigation and the show cause was issued by another authority.
- 5.13. that it was trite law that retracted confessions cannot form the sole basis for any finding or conclusion, unless it was corroborated and substantiated atleast in material particulars by other substantive evidence.
- 5.14. that the Applicant belonged to a very respectable and poor family background and the penalty imposed was highly excessive and exorbitant.

The applicant has prayed to the Revision Authority, Mumbai that the Order-in-Original No. 300/2016, dtd 09/11/2016 passed by the Additional Commissioner of Customs, Cochin and the Order in Appeal No.09/2017, dtd. 28/04/2017 passed by the Commissioner of Customs (Appeals), Cochin-9, imposing a personal penalty of Rs.5,00,000/- (Rupees Five lakhs only) may be set aside in the interest of justice or to issue any other order or orders as deemed fit and proper

6. Personal hearings in the case was scheduled for 14.11.2018. Thereafter, upon the change of the Revisionary Authority, personal hearings through the online / virtual video conferencing mode were scheduled for 03.11.2021, 10.11.2021, 11.01.2021 and on 03.02.2022. No one appeared for the applicant. Also, no one appeared for the respondent. Sufficient opportunities

of personal hearings having been granted, the case is taken up for a decision on the basis of evidence on record.

7. Government has gone through the facts of the case and the case papers available on the records. Government finds that this application is only on the limited point of imposition of penalty pleaded by the Applicant. The applicant has disowned the impugned gold rods and has stated that he is not the owner of the same. The role of the applicant, as brought out in the investigations is that on specific intelligence he had been intercepted and a search of his baggage led to the recovery of 17 door tower bolts which on examination revealed that the rods of the bolts were made of gold. A large quantity of gold, totally weighing 3644.22 grams and valued at Rs. 87,71,935/- (I.V) were recovered. The gold was ingeniously concealed and the recovery could be effected only after unscrewing the handle and screws and removing the rods which too had attachments at the end which had to be removed to get the rods made of gold. The applicant in his statement admitted his role in the smuggling operation. Government notes that this smuggling operation was a well thought out plan and the modus operandi was ingenious for the following reasons, (a). They had identified a domestic sector flight which had transit passengers from an international flight; (b). thereafter, the modus was to transfer the baggage of the international passenger to the domestic passenger; (c). they had identified the airport where they could carry out their plan, (d). the gold had been melted and converted into rods to evade detection, (e). these rods were well concealed inside the tower bolts, only the weight of the bolts gave the game away which led to a detailed examination and the gold rods were ingeniously placed inside the tower bolts. The applicant had not declared the gold. The quantity is large which indicated that it was for commercial purposes. The applicant was on a short visit to Dubai and hence, he was not a bona-fide passenger who was eligible to bring gold as per the baggage rules. The applicant had been offered a chance to declare the gold in his possession,

but he chose not to declare. From the afore-stated facts, Government finds that the absolute confiscation of the gold is justified.

8. The applicant in his written submission has stated that OAA and AA had failed to note that he had never claimed the gold i.e. in other words, applicant has disowned the same. On the limited issue of the imposition of a penalty of Rs. 5,00,000/- on the applicant under Section 112(a) of the Customs Act, 1962 which has been agitated in this revision application on the grounds that his statement had been retracted, the Government finds that this aspect has been gone into in great detail by the appellate authority which while rejecting the appeal, at para 8 of its Order has held,

"8. I have carefully considered the Order-in-Original, grounds of appeal and the evidence on record.

I find that this is a case of wilful mis-declaration and outright smuggling by the appellant wherein 17 numbers of gold rods of 24 carat purity weighing 3644.200 grams were concealed by him inside the door tower bolts brought by him. The statements given by the appellant and by the other two accomplices, Shri. Ajay Kumar and Shri Karamvir Sirohi clearly reveal the role of the appellant in the smuggling of the impugned gold. Appellant's own admission and the recovery of the gold concealed by him clearly establish the offence committed by him. Appellant has argued that the statement recorded from him was not voluntary and he had retracted his statement in the very first opportunity. In my opinion, subsequent retraction by the appellant can only be regarded as an afterthought and does not discredit the evidentiary value of the original statement recorded under Section 108 of the Customs Act 1962. It has been held by the Supreme Court in its various judgments such as Naresh J Sukhowani v Union of India [1996(83) ELT 258] and Romesh Chandra Mehta v. State of West Bengal [AIR 1970 SC 940] that the statements recorded under Section 108 of the Act ibid is a crucial piece of evidence. The offence committed by the appellant is so blatant that it completely justifies the absolute confiscation of the goods. The Penalty imposed on the appellant seems to be commensurate with the offence committed and I refrain from interfering with it. I, therefore appears to

be reasonable and I do not wish to interfere with it. I, therefore, do not find any infirmity in the impugned Order-in-Original ...”.

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 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”.

10. 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, liable for penalty.

11. The Government notes that not only the concealment but the modus operandi was unique and ingenious. The quantum of gold attempted to be smuggled into the country is large. This is a pre-planned attempt of smuggling of gold and evasion of payment of Customs duty. Had it not been for the specific intelligence coupled with the alertness of the Officials, the applicant and his accomplices would have gotten away with the smuggling of impugned gold. Government notes that all aspects of the case have been looked into by the appellate authority. Government observes that the order of the appellate authority imposing penalty on the applicant is proper and judicious and the penalty of Rs. 5,00,000/- imposed is commensurate with the omissions and commissions committed. The Government finds no merit in the revision application filed by the applicant and does not find it necessary to interfere in the order passed by the appellate authority.

12. Accordingly, the revision application is dismissed.

Shrawan
25/07/22
(SHRAWAN KUMAR)

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

ORDER NO. 226/2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED 25.07.2022
To,

1. Shri. Virender Verma, C-336, Millennium Apartments, Sector - 18, Rohini, Delhi - 110 089.
2. Commissioner of Customs, Custom House, Cochin - in : 682 009, Kerala.

Copy to:

1. Shri. Manu Tom Cheruvally, Advocate, C7, 1st Floor, N.J.K Triveni, Retd. Chief Justice Koshy Avenue Road, Near 'Woodlands' Junction, M.G. Road, Cochin - 682 011.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.