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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
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Mumbai-400 005

F.No. 373/209/B/15-RA | 5996

Date of Issue 06/10/2021

ORDER NO 236/2021-CUS (SZ)/ASRA/MUMBAI DATED 24.09.2021 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 Kumar Sinnaih

Respondent : Commissioner of Customs, Chennai Pin : 600 027.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. CUS-I No. 71/2015 dated 20.02.2015 passed by the Commissioner of Customs (Appeals-I), Chennai 600 001.

ORDER

This revision application has been filed by Kumar Sinnaih (herein referred to as Applicant) against the Order in Appeal C. CUS-I No. 71/2015 dated 20.02.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. The Officers of Customs intercepted the Applicant a Malaysian passport holder, at the Anna International Airport, Chennai on 29.11.2013 while he was attempting to pass through the green channel on suspicion and was subjected to a detailed examination. Examination resulted in the recovery of one gold bar from his pant pocket and six gold bars tied to his waist. Thus, Seven gold bars, totally weighing 7kgs valued at Rs. 2,12,73,000/ (Rupees Two crores Twelve lakhs Seventy three thousand) were recovered from the Applicant and seized.

3. The Original Adjudicating Authority vide its Order-In-Original No. 696/08.10.2014 ordered absolute confiscation of the gold under Section 111 (d) and (l) of the Customs Act, 1962, and imposed penalty of Rs. 20,00,000/- (Rupees Twenty lakhs) on the Applicant.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals), Chennai pleading for release of the gold on redemption fine and penalty. The Commissioner (Appeals) vide his order C. CUS-I No. 71/2015 dated 20.02.2015 rejected the appeal.

5. Aggrieved with the order of the Appellate authority, the Applicant has filed this revision application inter alia on the grounds that;

5.1. The order passed by the Appellate Authority is against the law,

5.2. Being a foreign national he was not aware of the law.

5.3. He claims ownership of the seized gold.

5.4. Non-declaration of the gold is only a technical fault,

5.5. To buttress his case, he has cited a few case laws pertaining to seizure of foreign currency and gold jewellery.

5.6) He has prayed to the Revision Authority to set aside the penalty of Rs. 20,00,000/- and to pass order for the re-export of the seized gold.

6. Personal hearings in the case was scheduled in the video conferencing mode on 04.03.2021 / 12.03.2021, 08.04.2021 / 15.04.2021, 22.07.2021 / 29.07.2021. Nobody attended the hearing on behalf of the Applicant department. The case is, therefore, taken up for decision on basis of evidence on record.

7. The Government has gone through the facts of the case. The Applicant was intercepted as he was attempting to walk through the green channel after completing immigration formalities. The seven gold bars were discovered only when the Applicant was thoroughly checked. The Applicant did not declare the gold bars as required under section 77 of the Customs Act, 1962. The quantity of gold recovered is quite large, of commercial quantity and in the form of bars (of 1 kg) and it was ingeniously concealed to avoid detection. The confiscation of the gold is therefore justified and the Applicant has rendered himself liable for penal action.

8. Government observes 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 Applicants thus liable for penalty.

9. Government also observes that the manner in which the gold was concealed i.e. wrapped with cloth around the waist of the applicant, reveals the intention of the Applicant. It also revealed his criminal bent of mind and a clear intention to evade duty and smuggle the gold into India. The Applicant being a foreign national was ineligible for import of gold. The circumstances of the case especially that the gold was wrapped around the waist, probates that the Applicant had no intention of declaring the gold to the Customs at the airport. All these have been properly considered by the Appellate Authority while confiscating the gold bars absolutely.

10. The main issue in the case is the quantum and 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, quantity being large and commercial, clear attempt to smuggle gold bars, is a fit case for absolute confiscation as a deterrent to such offenders. Thus, taking into account the facts on record and the gravity of offence, the adjudicating authority had rightly ordered the absolute confiscation of gold. In the instant case, the gold was cleverly and ingeniously wrapped around the waist by the applicant which indicates that he did not have any intention to declare the same. But for the intuition and the diligence of the Customs Officer, the gold would have passed undetected. Hon'ble Delhi High Court in the case of Jain Exports Vs Union of India 1987(29) ELT753 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 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.

11. With regard to the request by the applicant for re-export of the seized gold and for reduction of the penalty amount, the same have been dealt with at length by the Appellate Authority and the Government does not feel it necessary to interfere. The Question of allowing reexport even otherwise does not arise once goods are absolutely confiscated.

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

Shrawan
24/9/21
(SHRAWAN KUMAR)

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

ORDER No. ~~236~~/2021-CUS (SZ) /ASRA/

DATED 24.09.2021

To,

1. Shri. Kumar Sinniah, 281 / 134, Thambu Chetty Street, 1st Floor, Chennai - 600001.
2. The Commissioner of Customs, New Customs House, ACC, G.S.T Road, Menabakkam, Chennai, Pin : 600 0027.

Copy to:

1. Shri, V.R Karthikeyan, Advocate, 140, Addl. Law Chambers, High Court, Madras.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File,
4. Spare Copy.