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SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
8<sup>th</sup> Floor, World Trade Centre, Centre - 1, Cuffe Parade,  
Mumbai-400 005

F.No. 371/244/B/2020-RA | 5787

Date of Issue 06/10/2021

ORDER NO. <sup>245</sup> /2021-CUS (WZ)/ASRA/MUMBAI DATED 29.09.2021 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. Memon Anjum.

Respondent : Commissioner of Customs, Sardar Vallabhbhai Patel  
International Airport, Ahmedabad.

Subject : Revision Application filed, under Section 129DD of the Customs  
Act, 1962 against the Order-in-Appeal No. AHM-CUSTOM-000-  
APP-325-20-21 dated 04.09.2020. passed by the Commissioner  
of Customs (Appeals), Ahmedabad

ORDER

This revision application has been filed by Shri. Memon Anjum (herein after referred to as the Applicant) against the Order in appeal No. AHM-CUSTOM-000-APP-325-20-21 dated 04.09.2020 passed by the Commissioner (Appeals), Ahmedabad.

2. Briefly stated the facts of the case are that the applicant arrived at the Sardar Vallabhbai Patel International Airport (SVPI) on 026.07.2019 by Air Arabia Flight No. G4989 from Sharjah. On the basis of suspicion, applicant was intercepted after he had crossed the green channel and on questioning whether he was carrying any dutiable / restricted items declared in the negative. The applicant was found to be carrying one silver coated chain and three similar silver coated rings. The same upon scratching displayed a yellow colour inside. A Government Approved Valuer confirmed that the chain and 3 rings were of 24 carat gold and had been coated with rhodium. The 3 rings and chain which were coated with were weighing 242.91 gms and was of 24 carats, valued at Rs. 7,66,404/- (Tariff Value) and Rs. 8,72,046/- (LMV) and the same were seized.

3. After due course of law, the SCN was issued wherein it was alleged that the applicant had contravened the provisions of Section 77 & 79 of the Customs Act, 1962 and that the gold was under the provisions of Section 111(d), 111(i), 111(l) and Section 111(m) of the Customs Act, 1962 and that the applicant had rendered himself liable to penal action under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962. The Original Adjudicating Authority vide Order-In-Original No. 07/AP/MM-AC/SVPIA/2019 dated 28.11.2019 issued F.No. VIII/10-71/SVPIA/O&A/2019, ordered absolute confiscation of the seized gold and imposed penalty of Rs. 2,00,000/- on the applicant under Section 112 of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed an appeal before the Commissioner (Appeals), Ahmedabad who vide Order-In-Appeal No. AHM-CUSTOM-000-APP-325-20-21 dated 04.09.2020 rejected the appeal and declined to interfere in the Order-in-Original passed by the adjudicating authority.

5. Aggrieved with the aforesaid order dated 04.09.2020 passed by the Commissioner (Appeals), Ahmedabad, the Applicant, has filed this revision application inter alia on the grounds that;

5.1. The OIA passed by Commissioner (Appeals) is untenable in law and is liable to be set aside.

5.2. That the gold was purchased for the purpose of marriage of his daughter and that the gold is not a prohibited item and is required to be released on redemption.

5.3. That if the release of the gold was not possible, he may be permitted to re-export the same.

5.4. That it was held that the gold which was in the pocket of the trouser worn by him was concealed and had not been declared. That it was kept in the trousers for reasons of safety.

The Applicant has cited several case laws to buttress his case for release of the gold on redemption fine and has prayed to set aside the impugned Order-in-Appeal No. AHM-CUSTOM-000-APP-325-20-21 dated 04.09.2020 passed by the Commissioner (Appeals), Ahmedabad and to release the confiscated gold in lieu of redemption fine.

6. The applicant filed a miscellaneous application dated 30.08.2021 for early hearing with a prayer for the immediate release of the gold which was required for the marriage of his daughter.

7. A personal hearing in the case was scheduled on 22.09.2021. Shri. Anil Gidwani, Advocate appeared online on behalf of the Applicant and submitted that the 242 gms jewellery belonged to the applicant and it was not ingeniously concealed. It was not for commercial purpose and it was brought for the marriage of the daughter of the applicant. He requested to release the goods on minor redemption fine and penalty.

8. The Government has gone through the facts of the case, and notes that the applicant had passed through the green channel and had failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs

Act, 1962. In spite of being questioned the applicant had not disclosed that he was carrying dutiable goods and had he not been intercepted would have walked away with the impugned goods without declaring the same to Customs. Also, the gold chain and 3 gold rings were coated with rhodium to evade detection which indicates that the applicant did not intend to declare the same to Customs. The Government finds that the confiscation of the gold jewellery is therefore justified.

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 Applicants thus liable for penalty.

11. Now the issue to be decided in this case is whether the impugned gold chain and rings can be allowed to be released on redemption. The Hon'ble Supreme Court of India in Hargovind Das K Joshi versus Collector of Customs reported in 1992 (61) ELT 172 has set aside absolute confiscation of goods by Collector without considering question of redemption on payment of fine although having

discretion to do so, and remanded the matter to Collector for consideration of exercise of discretion for imposition of redemption fine as per Section 125 of Customs Act, 1962. Government also notes that even prohibited goods can also be allowed for redemption at the discretion of the judicial authority. The section also allows goods to be released to the person from whose possession or custody such goods have been seized.

12. In a recent judgement by the Hon'ble Supreme Court in the case of M/s Raj Grow Impex and others Vs UOI (CIVIL APPEAL NO(s). 2217-2218 of 2021 Arising out of SLP(C) Nos. 14633-14634 of 2020 – Order dated 17.06.2021), it is stated “.....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 exercise cannot be based on private opinion.”

13. Further, Mohd. Zia Ul Haque [2014 (314) ELT 849 (GOI)], the G.O.I at para 8.2 has held as under;

*8.2 Applicant has pleaded for allowing redemption of gold under Section 125 ibid. In this regard case is to be decided in view of the judgment of Hon'ble High Court of Madras dated 1-4-2008 in writ appeal Nos. 1488, 1502 & 1562 of 2007 in the case of Neyveli Lignite Corporation Ltd. v. UOI - 2009 (242) E.L.T. 487 (Mad.) wherein it was held “Redemption fine - Prohibited goods, discretion - Section 125 of Customs Act, 1962 - If goods are not prohibited then adjudicating officer shall give to the owner of goods option to pay redemption fine in lieu of confiscation as officer thinks fit. It is only when it is prohibited goods that the officer has discretion and it is open to him not to give the option to pay fine in lieu of confiscation.” Government observes that such discretion is to be exercised judiciously. In the instant case, the passenger is neither a habitual offender nor carrying the said goods for somebody else. He is the owner of the goods and concealment was not in an ingenious manner. There is a merit in the pleading of applicant that goods should be allowed to be redeemed on payment of redemption fine and therefore said plea is acceptable.*

14. Government notes that there is no past history of such offence/violation by the Applicant. The part of impugned gold jewellery was concealed but this at times

is resorted to by travellers with a view to keep the precious goods secure and safe. The quantity / type of gold being in form of gold chain and 3 rings is jewellery and is not commercial in nature. Under the circumstances, the Government opines that the order of absolute confiscation in the impugned case is in excess and unjustified. The order of the Appellate authority is therefore liable to be set aside and the goods are liable to be allowed redemption on suitable redemption fine and penalty.

15. In view of the above, the Government sets aside the impugned order of the Appellate authority in respect of the impugned gold jewellery. The impugned gold jewellery weighing 242.91 gms, valued at Rs. 7,66,404/- (Tariff Value) and Rs. 8,72,046/- (LMV) is allowed redemption on payment of Rs. 2,25,000/- (Rupees Two lakhs twenty five thousand only). The penalty of Rs. 2,00,000/- imposed under section 112 (a) of the Customs Act, 1962 imposed by the lower adjudicating authority and upheld by the appellate authority is appropriate.

16. Revision Application is disposed of on above terms.

*Shrawan Kumar*  
29/9/21  
(SHRAWAN KUMAR)  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. <sup>245</sup>/2021-CUS (WZ) /ASRA/

DATED 29.09.2021

To,

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2. The Commissioner of Customs, Sardar Vallabhai Patel International Airport, Ahmedabad - Pin : 380004. Email : supairport-custahd@nic.in.

Copy to:

3. Shri Anil Gidwani, Advocate, 412/A, Ratba High Street, Naranpur Char Rasta, Ahmedabad - 380013. Email. Anilgidwani5868@gmail.com
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File. ,
6. Spare Copy.