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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. 371/25/B/WZ/2018-RA | 5716

Date of Issue 05/10/21

ORDER NO. 247/2021-CUS (WZ)/ASRA/MUMBAI DATED 30.09.2021 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. Taiful Madani Abdul Kareem Shaikh.

Respondent : Pr. Commissioner of Customs, CSI Airport, Terminal-2, Mumbai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-929/17-18 dated 08-01-2018 passed by the Commissioner of Customs (Appeals), Mumbai – III, Marol, Mumbai – 400 059.

ORDER

This revision application has been filed by Shri. Taiful Madani Abdul Kareem Shaikh (herein after referred to as the Applicant) against the Order in appeal No. MUM-CUSTM-PAX-APP-929/17-18 dated 08.01.20218 passed by the Commissioner of Customs (Appeals), Mumbai – III.

2. Brief facts of the case are that the AIU officers intercepted Shri Taiful Madani Abdul Kareem Shaikh, (hereinafter referred to as "appellant") holding Indian Passport No. K 0810943 on suspicion near Exit Gate. The appellant had arrived from Riyadh via Bahrain by Gulf Air Flight No. GF 64 dated 6.09.2014 and had left column No. 9 of Indian Customs Declaration i.e. total value of dutiable goods being imported' as blank. During the examination, two black packets wrapped with black adhesive tape were found stuck to the bottom of the front portion of the baggage trolley on which the appellant was carrying his luggage. From the said packets 04 gold bars of 10 tolas each collectively weighing 466.4 grams and valuing Rs. 11,99,814/- were recovered.

3. The Original Adjudicating Authority vide Order-In-Original No. ADC/RR/ADJN/30/2016-17 dated 22.04.2016 issued through F.No. S/14-5-702/2014-15 Adjn (SD/INT/AIU/648/2014 AP"C") ordered absolute confiscation under section 111 (d),) & (m) of the Customs Act, 1962 and also imposed penalty of Rs. 1,00,000/- under Section 112 (a) & (b) of the Customs Act, 1962 on the applicant.

4. Aggrieved by the said order, the applicant filed an appeal before the Commissioner of Customs (Appeals), Mumbai – III who vide Order-In-Appeal No. MUM-CUSTM-PAX-APP-929/17-18 dated 08.01.2018 rejected the appeal and declined to interfere in the Order-in-Original passed by the adjudicating authority.

5. Aggrieved with the aforesaid order dated 08.01.2018 passed by the Commissioner (Appeals), Kochi, the Applicant has filed this revision application inter alia on the grounds that;

5.1. the seized gold was brought for his personal use and had not been concealed in the bottom of the trolley.

5.2. refutes the claim of the Respondent that he had crossed the green channel and claims that in fact he was heading towards the red channel when he was intercepted.

5.3. it was the first time time he brought the gold for his own use out of his own money earned by him and that he had not indulged in any manner in any illegal transaction to acquire the gold for sale in the market to get profit and evade duty thereon.

5.4. he had not got any opportunity to declare the goods and therefore, had not violated the provisions of Section 77 of the Customs Act, 1962.

5.5. the gold brought by him was neither restricted nor prohibited goods and the same can be released on applicable Customs duty under Section 125 of the Customs Act, 1962.

The Applicant has prayed to set aside, (a). the impugned Order-in-Appeal No. MUM-CUSTM-PAX-APP-929/17-18 dated 08.01.2018 passed by the Commissioner of Customs (Appeals), Mumbai – III and release the gold, (b). reduce the personal penalty of Rs. 1,00,000/- imposed under Section 112 (a) & (b) of the Customs Act, 1962 and to (c) pass any other order as deemed fit.

6. A personal hearing in the case was scheduled on 17.09.2021: Shri. Satish Kumar Dubey, Advocate appeared on behalf of the Applicant and reiterated the submissions already made. He submitted that the gold quantity is small, applicant is not habitual offender and therefore, goods may be released on reasonable redemption fine and penalty.

7. The Government has gone through the facts of the case, and notes that the applicant had failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. On 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, gold bars were neatly wrapped in black coloured adhesive tape which had been cleverly taped to the bottom of the trolley to avoid detection which indicates that the applicant did not intend to declare the same to Customs. The Government finds that the confiscation of the gold is therefore justified.

8. 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”.

9. 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.

10. Now the issue to be decided in this case is whether the impugned gold bars 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.

11. Moreover, 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.*" Government notes that there is no past history of such offence/violation by the Applicant. The impugned gold was concealed but this at times is resorted to with a view to keep the precious goods secure and safe. The quantity / type of gold was not commercial in nature. The applicant has claimed ownership of the gold. The original adjudicating authority and appellate authority both have not granted redemption as the applicant had concealed the gold. However, this concealment cannot be said to be ingenious. Under the circumstances, the Government opines that the order of absolute confiscation in the impugned case

is rather excessive 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.

12. In view of the above, the Government sets aside the impugned order of the Appellate authority in respect of the impugned gold bars. The impugned gold bars totally weighing 466.4 grams and valued at Rs. 11,99,814/- are allowed redemption on payment of Rs. 4,50,000/- (Rupees Four Lakh Fifty Thousand Only).

13. The penalty of Rs. 1,00,000/- (Rupees One Lakh Only) imposed under Section 112 (a) of the Customs Act is appropriate.

14. Revision Application is disposed of on above terms.

Shrawan Kumar
30/9/21

(SHRAWAN KUMAR)

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

ORDER No. ²⁴⁷ /2021-CUS (WZ) /ASRA/

DATED 30.09.2021

To,

1. Shri. Taiful Madani Abdul Kareem Shaikh, Makhdoomiya Mohalla Cross Lane, Murdeshwar, Bhatkal, Uttara Kannada, Karnataka - 581350.
2. The Pr. Commissioner of Customs, Chhatrapati Shivaji International Airport, Terminal - 2, Mumbai - 400 099.

Copy to:

3. Satish Kumar Dubey, Advocate, Room No.4A, 1st Floor, 105, Dhanji Sreet, Mumbai 400 003.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File. ,
6. Spare Copy.