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SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No. 371/291/B/16-RA / 8914

Date of Issue 05.09.2022

ORDER NO. 218/2022-CUS (WZ)/ASRA/MUMBAI DATED 30.08.2022  
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. Javed Alam Sever Beg

Respondent : Commissioner of Customs, Ahmedabad.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. AHD-  
CUSTM-000-APP-351-15-16 dated 09.06.2016 [F.No.  
s/49-263/CUS/AHD/2015-16 836/2016] passed by the  
Commissioner of Customs (Appeals), Ahmedabad.

ORDER

This revision application has been filed by Shri. Javed Alam Sever Beg (herein referred to as Applicant) against the Order-in-Appeal No. AHD-CUSTM-000-APP-351-15-16 dated 09.06.2016 [F.No. s/49-263/CUS/AHD/2015-16 836/2016] passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. The applicant had arrived by Emirates Airlines Flight No. EK-538 from Dubai on 26.06.2014 and had passed through the green channel after filing 'nil' Customs declaration form for dutiable goods. The Customs officers on suspicion questioned him and after unconvincing replies diverted him to the red channel for detailed examination. It was noticed that the applicant had departed to Dubai on 20.06.2014 and arrived back on 26.06.2014. X-ray screening of his checked-in baggage revealed images of metal wires. The bag was emptied and after the removal of stitches at the border of the top portion of the trolley bag, steel coated wires were found concealed. Scratching the surface of these wires revealed a yellow coloured metal inside. The same were assayed and was confirmed to be of pure gold. Thus, 645.400 gms of gold in the form of wires valued at Rs. 18,52,300/- (LMV) and Rs. 16,03,493/- (TV) were recovered from the applicant and were seized.

3. The Original Adjudicating Authority (OAA) i.e. Joint Commissioner of Customs, Ahmedabad vide Order-In-Original No. 86/JC-ÅK/SVPIA/O&A/2014 dated 18.12.2014 [F.No. VIII/10-148/SVPIA/O&A/2014 ordered for the absolute confiscation of the gold under Section 111(l) & 111(m) of the Customs Act, 1962. Penalty of Rs. 3,00,000/- ( Rupees Three Lakhs only ) under Section 112 of the Customs Act, 1962 and a further penalty of Rs. 1,50,000/- under Section 114AA of the Customs Act, 1962 were imposed on the applicant.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner of Customs (Appeals), Ahmedabad who vide AHD-CUSTOM-000-APP-351-15-16 dated , 09.06.2016 [F.No. s/49-263/CUS/AHD/2015-16 836/2016] rejected the appeal.

5. Aggrieved with the above order, the Applicant has filed this revision application on the following grounds;

5.1. that the lower authorities had failed to appreciate that gold was not a prohibited item.

5.2. that in similar cases of concealment of gold which had been relied upon in his averments before the lower authorities had not been considered.

The applicant has prayed that the absolute confiscation be set aside and the personal penalty imposed be reduced substantially.

6. Online personal hearings in the case were scheduled for 15.09.2021 / 22.09.2021. Shri. Prakash K. Shingrani, Advocate for the applicant vide his letter dated 15.09.2021 requested for adjournment for

1<sup>st</sup> week of October, 2021 on grounds that he was unwell. Accordingly, personal hearing through online video conferencing mode were scheduled for 05.10.2021 / 12.10.2021. Shri. Prakash K. Shingrani, Advocate vide his letter dated 14.10.2021 informed that due to his illness he was unable to attend and requested that the case be decided on merits and on the written submissions which were reiterated by him. Based on the request of the Advocate, the matter is being taken up for decision on the 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. He had filed a 'nil' Customs Declaration Form. The impugned gold was converted to wires and kept secreted in the frame of the trolley bag. It is clear that the applicant had resorted to an ingenious method of concealment to evade duty. By this action, it is clear that applicant had no intention to pay the Customs duty. The Applicant had not declared the impugned gold as required under section 77 of the Customs Act, 1962. In this case, more than quantity of gold, what matters is the type of concealment adopted to evade duty. The applicant had pre-planned and selected the method that he would use to avoid detection and thereby to evade Customs duty. The absolute confiscation of the gold is therefore justified and thus, the Applicant had rendered himself liable for penal action.

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. Once goods are held to be prohibited, Section 125 still provides discretion to consider release of goods on redemption fine. Hon’ble Supreme Court in case of *M/s. Raj Grow Impex [CIVIL APPEAL NO(s). 2217-2218 of 2021 Arising out of SLP(C) Nos. 14633-14634 of 2020 – Order dated 17.06.2021]* has laid down the conditions and circumstances under which such discretion can be used. The same are reproduced below.

*71. Thus, when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.*

*71.1. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken.*

11. Government observes that the manner in which the gold was concealed i.e. the gold had been converted to form wires, then coated to look like steel and then hidden in the framework of the trolley bag, which was then stitched over reveals the firm intention of the Applicant to hoodwink the authorities and evade duty. It also revealed clear intention and schemed attempt to evade duty and smuggle the gold into India. The Applicant had a short stay abroad and was ineligible for import of gold. The circumstances of the case especially the concealment method adopted, probates that the Applicant had no intention of declaring the gold to the Customs at the airport. These facts have been properly considered by the Appellate Authority and the lower adjudicating authority while confiscating the gold wires, absolutely.


12. The main issue in the case is the 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, clear attempt to smuggle gold, it 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. 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 non bonafide and unscrupulous elements to resort to concealment and bring gold. If the gold is not detected by the Customs 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 upholding the order of the adjudicating authority is therefore liable to be upheld and the Revision Application is liable to be dismissed.

13. The Government finds that the penalty of Rs. 3,00,000/- imposed under section 112(b) is appropriate and commensurate with the omission and commission committed by the applicant. The Government does not find it necessary to interfere in the order passed by the lower authorities. However, once penalty has been imposed under section 112(b) there is no necessity of imposing penalty under section 114AA. The penalty of Rs. 1,50,000/- ( Rupees One lakh and fifty thousand only ) imposed under Section 114AA of the Customs Act, 1962 is set aside.

14. The Applicant has pleaded for setting aside the Order passed by the Appellate Authority which has upheld the order passed by the Original Adjudicating Authority. The Government, keeping in mind the facts of the case is in agreement with the observations of the Appellate authority and finds that absolute confiscation is proper and judicious and also penalty imposed under Section 112(b) of the Customs Act 1962 is appropriate. Penalty imposed under Section 114AA of the Customs Act, 1962 is set aside.

15. Revision Application is decided on the above terms.

  
( SHRAWAN KUMAR )  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. ~~ZAS~~218/2022-CUS (WZ) /ASRA/

DATED ~~30~~ 08.2022

To,

1. Shri. Javed Alam Sever Beg, Abdul Wahab Chawl, Room No. 2, Lal Tanki, Quershi Nagar, Kurla (East), Mumbai - 400 070.
2. Commissioner of Customs, Customs House, Navrangpura, Ahmedabad - 380 009.

Copy to:

1. Shri. Prakash Shingrani, Advocate, 12 / 334, Vivek New MIG Colony, Bandra (East), Mumbai - 400 051.
2. ~~Sr. P.S. to AS (RA), Mumbai.~~
3. Guard File,
4. File Copy.