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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. 373/01, 02 & 02-A/B/2017-RA / 309D

Date of Issue

01.09.2021

ORDER NO. ²⁵²₂₅₄ /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 : (a). Shri. Khairiya Seyed Ishak,
(b). Shri. Kochchamy Vadakancheri Kunchi Mohamed,
(c). Smt. Shanthini Devi Selliah

Respondent : Commissioner of Customs, Goa.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. GOA-
CUSTM-000-APP-192 to 193-16-17 dated 19.10.2016
passed by the Commissioner (Appeals), Central Excise &
Customs, Goa - 403 001.

ORDER

These revision applications have been filed by (a). Smt Khairiya Seyed Ishak, (b). Smt. Kochchamy Vadakancheri Kunchi Mohamed & (3). Smt. Shantini Devi Selliah (herein referred to as Applicants or alternately referred to as Applicant No. 1,2,3 respectively.) against the Orders in Appeal No. GOA-CUSTM-000-APP-192 to 193-16-17 dated 19.10.2016 passed by the Commissioner (Appeals), Central Excise & Customs, Goa – 403 001.

2. All the above mentioned Revision Applications pertain to gold ornaments attempted to be imported without declaration by the Applicants who are all Sri Lankan nationals. Since, the issue involved is similar in all these 3 applications and the same had been decided in a single Order-in-Original, these 3 applications are being taken up together for a common disposal.

3(a). The brief facts of the case are that on 19.02.2014, Goa Customs detained a group of four Sri Lankan passengers viz. Shri. Yaseer Junaid, Smt. Kochchamy V. K. Mohamed (A2), Smt. Khairiya Seyed Ishak (A1) and Smt. Shanthini Devi Selliah (A3), who had all walked through the green channel at Goa International Airport on their arrival as domestic passengers. They had arrived from Mumbai on board Air India Flight AI-984 which had originated at Dubai and arrived at Goa after a halt at CSI Airport, Mumbai. Interrogation at the airport revealed that these 4 persons were travelling at the instance of another person who was travelling as an international passenger on the same flight i.e. AI-984. On suspicion, the applicants who were travelling as domestic passengers were searched and it was found that the 3 lady applicants were wearing gold ornaments comprising of bangles and chains on their person. These gold ornaments were found to be totally weighing 2160 grams and valued at tariff value of Rs. 57,24,422/- & market value of Rs. 62,42,400/-.

The details of the quantity and valuation etc are detailed in the original order passed by the lower adjudicating authority and the same is tabulated here below.

TABLE No. 1.

Sr. No.	Name	Details of ornaments	Weight in gms.	Total Weight in gms.
1.	Smt. Khairiya Seyed Ishak	04 bangles	425	723
		01 chain	298	
2.	Smt. Kochchamy V. K. Mohamed (A2)	04 bangles	423	717
		01 chain	294	
3.	Smt. Shanthini Devi Sellaih	04 bangles	420	718
		01 chain	298	

3(b). The applicants revealed that the gold ornaments were handed over to them by Shri. Yaseer Junaid who in turn revealed that the same was handed over to him by the international passenger. The said gold ornaments, were placed under seizure under the provisions of the Customs Act, 1962 as the same was being attempted to be smuggled in the country without declaring the same to Customs and passing through green channel.

4. After due investigations, the applicants were issued with a show cause notice which was adjudicated by the Additional Commissioner of Customs, Marmagoa, Goa vide Order-in-Original No. 30/2015-ADC(CUS) dated 13.10.2015 issued on 16.10.2015 through F.No. 11/12/2014-R&I(APT)(AIU) who ordered for the absolute confiscation of the 2160 grams of gold valued at Rs. 57,24,422/- (CIF) and imposed a fine of Rs. 50,000/- each under Section 112(a) & (b) of the Customs Act, 1962 and also imposed a penalty of Rs. 10,000/- each on the applicants under Section 114AA of the Customs Act, 1962.

5. Aggrieved with this Order, the applicants preferred an appeal with the Appellate Authority (AA) i.e Commissioner (Appeals), Central Excise &

Customs, Goa – 403 001 who vide his Orders-in-Appeals No. GOA-CUSTOM-000-APP-192 to 193-16-17 dated 19.10.2016 upheld the Original Order passed by the lower adjudicating authority in respect of the absolute confiscation of the gold ornaments and penalty imposed on the applicants under Section 112(a) & (b) of the Customs Act, 1962. However, the penalty imposed on the applicants by the lower adjudicating authority under Section 114AA of the Customs Act, 1962 was set aside by the appellate authority

6. The applicants have filed a revision application against the Orders-in-Appeal no. No. GOA-CUSTOM-000-APP-192 to 193-16-17 dated 19.10.2016 passed by the appellate authority on the grounds that;

- 6.1. The orders in appeals are bad in law,
- 6.2. That nothing had been concealed by the applicants,
- 6.3. That the request for re-export had not been considered by the lower authorities, and the same should be allowed on payment of redemption fine.

The applicants have prayed that the orders of the lower adjudicating authority and the appellate authority be set aside and they be allowed to re-export the seized gold ornaments.

7. Accordingly, personal hearings in the case was scheduled on 30.08.2018. However, no one appeared on behalf of the applicant. After change of the revisionary authority, a revised date was scheduled on 14.09.2021 / 21.09.2019 for hearing through the video conferencing mode. Shri. K. Mohamed Ismail, Advocate of the applicants through his letter dated 22.10.2021 waived the personal hearing and requested to decide the case on

the basis of his application. The records indicate that vide earlier letters dated 20.11.2018 and 07.08.2021, the Advocate waived of the personal hearing and had requested to decide the case as per his application.

8. No one appeared on behalf of the department. Sufficient opportunities have been granted. The applicants have waived of the personal hearing and have requested to decide the case on the basis of their submissions. Therefore, the case is taken up for a decision on the basis of evidence on record.

9. The Government has gone through the facts of the case. The Applicants were intercepted as they were attempting to walk through the green channel. Though they were travelling in the domestic leg of the flight as domestic passengers they had collected gold from an International passenger and attempted to clear the same. The applicants have aided and abetted in the act to smuggle the gold ornaments without declaring to Customs. The gold ornaments totally weighing 2160 grams were detected only due to the alert staff manning the Customs at the Goa Airport. The Applicants had not declared the gold ornaments as required under Section 77 of the Customs Act, 1962. The quantity of gold recovered is quite large, of commercial quantity and the applicants had meticulously and systematically planned an ingenious method to avoid detection as domestic passengers are usually not checked at the airport. The confiscation of the gold ornaments is therefore, justified and the Applicants have rendered themselves liable for penal action.

10. 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”.

11. 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.

12. 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.

13. Government also observes that the manner in which the gold ornaments were attempted to be smuggled wherein an international passenger transfers the gold to other passengers who were travelling on domestic route reveals the intention of the Applicants to avoid detection and not pay any Customs duty. Using this intricate and planned method reveals that the applicants were part of a syndicate which harboured a clear intention to evade duty and smuggle the gold ornaments into India. The Applicants all being foreign nationals were ineligible for import of gold. All these have been properly considered by the Appellate Authority while confiscating the gold bars absolutely.

14. 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 smuggling being clever and ingenious, quantity being large and commercial, clear attempt to smuggle gold ornaments, 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 the

offence, the adjudicating authority had rightly ordered for the absolute confiscation of the gold ornaments. In the instant case, applicants had used an ingenious method to smuggle the gold ornaments and that they 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 ornaments will encourage such smugglers who use ingenious methods to evade Customs duty and bring economic harm to the country. If the gold had not been detected by the Customs authorities, the passengers 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.

15. With regard to the request by the applicants for re-export of the seized gold, since the same has been ordered for absolute confiscation the question of re-export does not arise for goods that are absolutely confiscated.

16. With regard to the request by the applicants for reduction of the penalty amount, the Government finds that the lower adjudicating authority has imposed a reasonable penalty on the applicants under Section 112 (a) and (b) of the Customs Act, 1962 and also, the Government notes that the appellate authority has rightly waived off the penalty imposed on the applicants under Section 114 of the Customs Act, 1962.

17. In view of the above, the Government upholds the Order of the Appellate authority which is legal and proper. These 3 Revision Applications are accordingly dismissed.

Shrawan
20/8/22
(SHRAWAN KUMAR)

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

252-
ORDER No. 254/2022-CUS (WZ) /ASRA/

DATED 30.08.2022

To,

1. Smt. Khairiya Seyed Ishak, R/O/61/1, Vilshn Street, Colombo - 12, Sri Lanka.
2. Smt. Kochchamy Vadakancheri Kunchi Mohamed, R/o 43/2, Kottikawathc, Pudhama, Colombo, Sri Lanka.
3. Smt. Shantini Devi Selliah, R/0 85, Vilshn Street, Colombo - 12, Sri Lanka.
4. The Commissioner of Customs, Custom House, Marmagoa, Goa - 403 803.

Copy to:

1. Shri. K. Mohamed Ismail, Advocate, New No. 102, Linghi Chetty Street, Chennai - 600 00.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File,
4. Spare Copy.