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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/100/B/15-RA (583)

Date of Issue 06/0/2021

ORDER NO. ²⁵³/2021-CUS (SZ)/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 Malleswara Rao Borra

Respondent : Commissioner of Customs, Airport, Bangalore.

Subject : Revision Application filed, under Section 129DD of
the Customs Act, 1962 against the Order-in-Appeal
No. 80/2015 dated 22.01.2015 passed by the
Commissioner of Customs (Appeals), Bangalore.

ORDER

This revision application has been filed by Shri Malleswara Rao Borra (herein after referred to as the Applicant) against the order in appeal Order-in-Appeal No. 80/2015 dated 22.01.2015 passed by the Commissioner of Customs, (Appeals), Bangalore.

2. Briefly stated the facts of the case are that the Applicant, was intercepted when he arrived at the Kempegowda International Airport on 04.03.2012, while he was exiting the green channel. The Applicant had declared the value of dutiable goods valued at Rs. 43,250/- and he was carrying one 40' Samsung LED TV. On personal examination the officers recovered a gold kada and black leather belt with a nickel coated gold buckle. The gold buckle weighed 232.40 grams and the kada weighed 116.40 grams, both totally valued at Rs. 10,30,683/- (Rupees Ten lacs Thirty thousand Six hundred and Eighty three).

3. The Original Adjudicating Authority vide Order-In-Original No. 101/2014 dated 10.04.2014 ordered absolute confiscation of the impugned gold under Section 111 (d) (l) & (m) of the Customs Act, 1962, and imposed penalty of Rs. 90,000/- (Rupees Ninety thousand) under Section 112 (a) of the Customs Act, 1962. A penalty of Rs. 30,000/- (Rupees Thirty thousand) under Section 114AA of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 80/2015 dated 22.01.2015 rejected the appeal of the Applicant.

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

5.1 The Appellant is an Indian National and he arrived at Bangalore International Airport on 10.4.2014 from Muscat. The appellant was carrying gold totally weighing 348.80 gms valued at Rs. 10,30,683/- and one 40' Samsung LED TV. The lower authorities confiscated gold jewellery brought by his own purpose. The aforesaid gold were duly declared by the Applicant to the appropriate officers at Airport. Admittedly there was no concealment nor misdeclaration as to the gold brought by the Applicant, so as to attract the customs violations. Aggrieved by both orders of the lower authorities, the applicant is filing the present Revision Application.

5.2 The order of the Respondents are bad in law, weight of evidence and probabilities of the case.

5.3 Both the respondents failed to see that the true declaration made by the Applicant before the concerned officers at Airport and nothing Concealed not misdeclared by the Applicant.

5.4 The request for Re-export of the above gold jewellery were not at all considered by the Lower authorities and further they have failed to consider that the value adopted by the lower authorities were not in order and the same w figured higher side.

5.5 Both the respondents have failed to see that the Applicant had opted for the red channel to prove his bonafideness that he has got dutiable goods. However the officers have totally ignored this and registered a case against the applicant.

5.6 Both the respondents have ignored the Govt., of India order reported in ELY 1995 pages 287 to 208 wherein Re-Export was allowed on payment of redemption fine.

5.7 Both the lower authorities have failed to consider that the Hon'ble High court of Judicature at Bombay has granted Re-export in

a similarly placed matter in its order dated 29/5/2002 in Criminal Writ petition No. 685/2002.

5.8 Under the above facts and circumstances of the case the Applicant therefore prays that this Hon'ble Revision Authority may be pleased to set aside both the lower authorities orders and grant relief of fully set aside personal penalty of Rs.80,000/- order for re-export of the same and thereby render justice.

6. Personal hearings in the case were scheduled online on 04.03.2021, 12.03.2021, 08.04.2021, 15.04.2021, 02.07.2021 and 16.07.2021. However, neither the Applicant nor his representative(s) attended the hearings. The matter is therefore being decided on merits.

7. At the outset Government notes that the Applicant had brought the gold in the form of a nickle coated buckle and kada, he informed that he was hoping that it would not attract attention of the Customs authorities. A declaration as required under section 77 of the Customs Act, 1962 was not submitted and therefore the confiscation of the gold is justified. Government however notes that the gold was not ingenuously concealed. The ownership of the gold is not disputed. The quantity of gold under import is small. There are no allegations that the Applicant is a habitual offender and was involved in similar offences earlier. The facts of the case indicate that it is a case of non declaration of gold, rather than a case of smuggling for commercial considerations. Under the circumstances, the seriousness of the misdemeanour is required to be kept in mind when using discretion under Section 125 of Customs Act, 1962 and while imposing quantum of penalty.

8. Section 125 of the Act leaves option to grant the benefit or not so far as goods whose import is prohibited but no such option is available in respect of goods which can be imported, but because of the method of importation adopted become liable for confiscation. The Apex court in the case of Hargovind Dash Vs Collector of Customs 1992 (61) ELT 172 (SC) and the several other cases has pronounced that a quasi judicial authority must excise discretionary

powers in a judicious manner and not in arbitrary manner. As per the provisions of section 125 of the customs act, 1962 in case of goods which are prohibited the option of redemption is left to the discretionary power of the authority who is functioning as a quasi judicial authority and in cases of other goods option to allow redemption is mandatory.

9. 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. The absolute confiscation of the gold, leading to dispossession of the Applicant of the gold in the instant case is therefore harsh and not justified. Government therefore, sets aside the impugned order of the Appellate authority. The impugned gold buckle and kada is allowed redemption on payment of Rs. 4,25,000/- (Rupees Four Lakhs Twenty Five thousand only). The penalty imposed under section 112 (a) & (b) is appropriate, however,

once penalty has been imposed under section 112(a) and (b) there is no necessity of imposing penalty under section 114AA. The penalty of Rs. 20,000/- (Rupees Twenty thousand) imposed under section 114AA of the Customs Act, 1962 is set aside.

10. Revision Application is partly allowed on above terms.

Shrawan
30/9/21
(SHRAWAN KUMAR)

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

ORDER No. ²⁵³ /2021-CUS (SZ) /ASRA/

DATED 30-09-2021

To,

1. Malleswara Rao Borra, No. 10-19-46, Ayyappa Towers, Brahmin Street, Vijayawada, 520001, Andhra Pradesh.
2. The Commissioner of Customs, Kempegowda International Airport, C. R. Building, Queens Road, Bangalore

Copy To,

1. Shri. K. Mohamed Ismail, Advocate, New No. 102, Linghi Chetty Street, Chennai - 600 001
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.