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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. 373/97/B/2016-RA / 6102

Date of Issue 20/10/2021

ORDER NO 259/2021-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. Shahul Hameed.

Respondent : Commissioner of Customs, Anna International Airport,  
Meenambakkam, Chennai - 600 027.

Subject : Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C.Cus-I No. 156 / 2016 dated 24.03.2016 issued through F.No. C4-I/93/O/2016-Air passed by the Commissioner of Customs (Appeals-I), Chennai - 600 001.

ORDER

This revision application has been filed by Shri. Shahul Hameed (herein after referred to as the Applicant) against the Order in appeal No. C.Cus-I No. 156 / 2016 dated 24.03.2016 issued through F.No. C4-I/93/O/2016-Air passed by the Commissioner of Customs (Appeals-I), Chennai - 600 001.

2. Briefly stated the facts of the case are on 04.10.2015, the applicant who had arrived from Dubai by Indigo Flight No. 6E 66 dated 04.10.2015 was intercepted by the Customs Officers near the exit gate of the arrival hall after having passed through the Customs green channel. He was questioned about possession of any dutiable goods to which he replied in the negative. The applicant had filled up Rs. 3000/- as the value of the dutiable goods in the Customs Declaration Card. Nothing was found in his hand baggage. His personal search led to the recovery of two Nos. of yellow colour metal kadas and one yellow colour metal chain from side pocket of the pant worn by him. The gold appraiser certified that the recovered goods were gold of 24 carats, totally weighing 597 gms having market value of Rs.15,91,602/-(MV). Since, the applicant had attempted to smuggle the said gold by not declaring it and concealing it and not having any licit document of purchase, the 2 gold kadas and gold chain were seized for further action under the Customs Act, 1962 read with Sec 3(3) of the Foreign Trade (Development & Regulation) Act, 1992. The applicant informed that the gold was handed over to him by an unknown person and was instructed to hand over the same to a receiver outside the Chennai Airport. The applicant stated that he was offered Rs.10,000/- and had committed the offence for monetary consideration. The applicant had requested that the case may be adjudicated without the issue a show cause notice.

3. The Original Adjudicating Authority vide Order-In-Original No. 400 / 2015-16-Airport issued through O.S 1088 / 2015 - AIR dated 05.01.2016 ordered absolute confiscation of the seized two Nos. of crude gold kadas and one semi finished chain totally weighing 597 gms and valued at Rs. 15,,91,602/- under section 111 (d) and (l) of the Customs Act, 1962 read with Sec 3(3) of the Foreign Trade (Development & Regulation) Act, 1992 and imposed a penalty of Rs.1.60,000/- (Rupees One Lakh Sixty Thousand only) on the applicant under section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed an appeal before the Commissioner of Customs (Appeals-I), Chennai – 600 001 who vide Order-In-Appeal No. C.Cus-I No. 156 / 2016 dated 24.03.2016 issued through F.No. C4-I/93/O/2016-Air rejected the appeal and declined to interfere in the Order-in-Original passed by the lower adjudicating authority.

5. Aggrieved with the aforesaid order dated 24.03.2016 passed by the Commissioner of Customs (Appeals-I), Chennai – 600 001, the Applicant, has filed this revision application (duly affirmed / endorsed before the Consulate General of India, Dubai) inter alia on the grounds that;

5.1. The OIA passed by Commissioner (Appeals) upholding the Order in Original passed by the Lower Adjudicating Authority (LAA) is arbitrary in nature and has not appreciated the evidence in favour of the applicant.

5.2. The LAA appellate authority imposed a hefty penalty of Rs. 1,60,000/- and ought not to have denied the applicant the opportunity of re-export of the seized gold.

5.3. that the LAA had failed to appreciate that there was no concealment.

5.4. that the applicant is undergoing untold misery, mental trauma and stiff financial situation as his entire earnings had been invested in the seized gold which had been confiscated.

The Applicant has prayed that the LAA's impugned order no. Order-in-Appeal No. 400 / 2015-16-Airport issued through O.S 1088 / 2015 - AIR dated 05.01.2016 be (a). modified to allow redemption of the confiscated gold under Section 125 of the Customs Act, 1962, (b). modified to permit the re-export of the seized gold and (c) modify the penalty of Rs. 1,60,000/- imposed under Section 112(a) of the Customs Act, 1962.

7. A personal hearing in the case was scheduled on 31.10.2018, 20.11.2018 / 22.11.2018 and 20.08.2021 / 27.08.2021. Shri. Mohammad Fakruddin, brother of the applicant appeared online on behalf of the Applicant and reiterated the earlier submission. He stated that the gold and jewellery belonged to applicant and had been kept in the pocket. He stated that the gold was brought for marriage in the family and requested for release on nominal redemption 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 two gold kadas 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 kadas 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 2 kadas 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. Considering overall facts and circumstances of case, impugned gold jewellery weighing 597 gms, valued at Rs. 15,91,602/- (LMV) is allowed redemption on payment of Rs. 7,25,000/- (Rupees Seven lakhs twenty five thousand only). The penalty of Rs. 1,60,000/- 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*  
30/9/21

( SHRAWAN KUMAR )

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

ORDER No. <sup>259</sup> /2021-CUS (WZ) /ASRA/

DATED 30.09.2021

To,

1. Shri. Shahul Hameed s/o Jainulabudeen, No. 41-A, Main Road, Manganampet, A.K Chattiram, Nagai District, Tamil Nadu – 609 102.
2. The Principal Commissioner of Customs, Anna International Airport, Meenambakkam, Chennai – 600 027.

Copy to:

3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File. ,
5. Spare Copy.