



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No. 371/9/B/2017-RA / 3797

Date of Issue 15.09.2022

ORDER NO. 261/2022-CUS (WZ)/ASRA/MUMBAI DATED 13.09.2022
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. Srinivasa Moram

Respondent : Commissioner of Customs, Marmagoa, Goa.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
GOA-CUSTM-000-APP-308-2016-17 [F.No. A-05/CUS/
GOA/2016-17] dated 20.12.2016 passed by the
Commissioner (Appeals), Pune Appeal – II CX, at Goa.

ORDER

This revision application has been filed by Shri. Srinivasa Moram (herein referred to as Applicant) against the Order-In-Appeal No. GOA-CUSTOM-000-APP-308-2016-17 [F.No. A-05/CUS/GOA/2016-17] dated 20.12.2016 passed by the Commissioner (Appeals), Pune Appeal – II CX, at Goa.

2. The brief facts of the case are that on 07.09.2014, the applicant, a domestic traveller was intercepted by Customs Officers when he had arrived at Goa Airport on board Air India Flight No. AI 984 which had originated at Dubai and had arrived at Goa from Mumbai. At the time of interception, the applicant had walked through the green channel and an examination of his hand baggage and personal search led to the recovery of one gold chain weighing 349.5 gms valued at Rs.8,95,419/- which had been concealed inside the shoe worn by him. The applicant had failed to submit a declaration that he possessed any gold or valuables. In his statement recorded under Section 108 of the Customs Act, 1962, the applicant admitted that his son, Shri Srilokh Moram was an international passenger in the same flight and had travelled from Dubai and had handed over the said gold chain to him during the domestic leg of the flight from Mumbai. The applicant revealed that the gold chain had been kept hidden in his shoe to evade payment of Customs Duty. Applicant revealed that he and his son had planned to smuggle the gold for monetary benefits.

3. After due investigations, the applicant was issued with a show-cause notice which was adjudicated by the Addl. Commissioner of Customs, Goa vide Order-in-Original No. 10/2016-ADC(CUS) dated 03.03.2016 (copy not submitted by Applicant in his RA). The applicant was held to be not eligible to import the gold through baggage and as the gold chain was ingeniously concealed, the redemption of the same was denied. The adjudicating authority ordered the absolute confiscation of the gold chain weighing 349.5 gms and

valued at Rs.8,95,419/-under Section 111 (d), Section 111 (i), Section 111), Section 111 (1) and Section 111 (m) of the Customs Act, 1962 and imposed a personal penalty of Rs.50,000/- under Section 112 of the Act and a penalty of Rs.10,000/- under Section 114AA of the Act.

4. On being aggrieved with the impugned Order-in-Original, the Applicant preferred an appeal before Commissioner (Appeals), Pune Appeal – II CX., Goa who vide his Order-In-Appeal No. GOA-CUSTOM-000-APP-308-2016-17 [F.No. A-05/CUS/GOA /2016-17] dated 20.12.2016 upheld the order passed by the adjudicating authority.

5. On being aggrieved with the Order-In-Appeal passed by the appellate authority, the applicant has filed this Revision Application and the grounds of appeal are as under;

- 5.1. the impugned order was bad in law, weight of evidence and probabilities of the case.
- 5.2. that a true declaration had been made to the Officers and nothing had been concealed or mis-declared and the same had not considered by the appellate authority.
- 5.3. that a higher value had been adopted.
- 5.4. that applicant had opted for the red channel was ignored by the lower authorities.
- 5.5. that the applicant was a domestic passenger and declaration was not required.
- 5.6. case law reported in ELT 1995 pgs 208 to 287 wherein re-export was allowed on payment of redemption fine which was relied upon by the applicants had not been considered.

Under the above facts and circumstances of the case, the Applicant has prayed that the Revision Authority be pleased to set aside both the orders of the lower authorities and to set aside the total penalty of Rs. 60,000/- and to order for release the gold and thereby render justice.

6. Shri. K. Mohamed Ismail, Advocate for the applicant vide his letter dated 22.10.2021 has waived the personal hearing in respect of the Revision Application [RA] no. 371/9/B/2017-RA and requested to take the written submission as his oral submissions and prayers mentioned in the revision application and pass orders in favour of the applicant. In view of the same, the said RA is taken up for a decision.

7. The Government has gone through the facts of the case. The Applicant was a domestic passenger and had accepted the impugned gold onboard the flight and had attempted to pass the Customs when he was intercepted. The applicant had used an innovative method to hoodwink the Customs and smuggle out the gold without Customs duty being discharged on the same. Applicant had meticulously pre-planned the method adopted to smuggle the gold. Had it not been for the alertness exhibited by the Customs, the applicant would have been successful in smuggling out the gold and evading arrest. It is clear that the applicant had resorted to this innovative and ingenious method 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, the quantity of gold seized does not matter, what matters is the type of method adopted for concealment 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 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 also observes that the manner in which the gold was concealed i.e. by using an innovative method of exchanging the gold mid-flight between an International passenger and a domestic passenger, reveals the innate intention of the Applicant. It also revealed his criminal bent of mind wherein, admittedly, this method was adopted by father and son with a clear intention to evade duty and smuggle the gold into India. 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. All these have been properly considered by the Appellate Authority and the lower adjudicating authority while absolutely confiscating the gold chain.

12. The main issue in the case is the manner in which the impugned gold chain 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, innovative and ingenious with a clear attempt to smuggle the gold, this 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, Government finds that the adjudicating authority had rightly ordered for the absolute confiscation of impugned gold chain. 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 Custom 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. 50,000/- imposed on the applicant under Section 112 of the Customs Act, 1962 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.

14. Government finds that penalty of Rs. 10,000/- has been imposed under Section 114AA of the Customs Act, 1962. Penalty imposed under Section 112(a) is appropriate and needs no revision. In addressing the issue of penalty under

section 114AA of the Customs Act, 1962, Government relies on the observations of the Hon'ble High Court of Karnataka in the case of Khoday Industries Ltd. Vs UOI reported in 1986(23)ELT 337 (Kar), has held that "*Interpretation of taxing statutes – one of the accepted canons of Interpretation of taxing statutes is that the intention of the amendment be gathered from the objects and reasons which is a part of the amending Bill to the Finance Minister's speech*".

15. In view of the above the objective of introduction of Section 114AA in Customs Act as explained in para 63 of the report of the Standing Committee of Finance (2005-06) of the 14th Lok Sabha is reproduced below;

" Section 114 provides for penalty for improper exports of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulations could escape penal action even when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declaration, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to five times the value of the goods. A new Section 114AA is proposed to be inserted after Section 114A."

16. Government therefore observes, penalty under Section 112 is imposable on a person who has made the goods liable for confiscation. But there could be situation where no goods ever cross the border. Since such situations were not covered for penalty under Section 112/114 of the Customs Act, 1962, Section 114AA was incorporated in the Customs Act by the Taxation Laws (Amendment) Act, 2006. Hence, once the penalty is imposed under Section 112(a), then there is no necessity for a separate penalty under section 114AA for the same act. The penalty of Rs. 10,000/- (Rupees Ten thousand only) imposed under section 114AA of the Customs Act,1962 is liable to be set aside.

17. 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 the penalty imposed under Section 112(a) of the Customs Act 1962 is proper and judicious. Penalty of Rs. 10,000/- 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. 261 /2022-CUS (WZ) /ASRA/ DATED 13.09.2022

To,

1. Shri. Srinivasa Moram, C/o. Shri. K. Mohamed Ismail, Advocate, New No. 102 [Old no. 271], Linghi Chetty Street, Chennai - 600 001.
2. Commissioner of Customs, Custom House, Marmagoa, Goa - 403 803

Copy to:

1. Shri. K. Mohamed Ismail, Advocate, New No. 102 [Old no. 271], Linghi Chetty Street, Chennai - 600 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.