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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

F.No. 373/93/B/16-RA/6/95

Date of Issue 26/10/2021

ORDER NO. <sup>265</sup>/2021-CUS (SZ)/ASRA/MUMBAI DATED 25.10.2021 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. Hameed Chundan Palakkol.

Respondent: Commissioner of Customs, Calicut Airport, Karippur  
Pin : 673 647.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal CAL-  
EXCUS-000-APP-497-15-16 dated 29.02.2016 [A.No.  
07/CUS/CLT/2014/399] passed by the Commissioner of  
Central Excise, Customs & Service Tax (Appeals-II), C.R.  
Building, I.S. Press Road, Cochin - 18.

ORDER

This revision application has been filed by Shri. Hameed Chundan Palakkol (herein referred to as Applicant) against the Order in Appeal CAL-EXCUS-000-APP-497-15-16 dated 29.02.2016 [A.No.07/CUS/CLT/2014/399] passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals-II), Cochin - 18

2. Brief facts of the case are that the applicant arrived at the International Airport, Calicut on 14.05.2014 by flight no. EK 560. A case was registered against the applicant for attempting to import gold bars without declaring the same to Customs. The applicant had opted for the green channel and was intercepted at the exit gate. The applicant was a regular traveler and was well aware of the rules and had admitted to having concealed the gold to avoid payment of duty. In all 5 gold bars of 10 tolas each, weighing 583 gms and having market value of Rs. 14,97,068/- were recovered and seized from the applicant.

3. The lower adjudicating authority vide OIO no. 13/2014 dated 15.05.2014 (OS No. 51/2014) had ordered for absolute confiscation of the 5 gold bars totally weighing 583 gms, valued at Rs. 14,97,068/- under Section 111 of Customs Act, 1962 and imposed penalty of Rs. 5,25,000/- under Section 112(a) and (b) of Customs Act, 1962 and also imposed penalty of Rs. 2,50,000/- under Section 114AA of the Customs Act, 1962.

4. Aggrieved with this order, the applicant preferred an appeal before the appellate authority with a request to set aside the order-in-original passed by the lower adjudicating authority. The appellate authority vide Order-in-Appeals No. CAL-EXCUS-000-APP-497-15-16 dated 29.02.2016 in respect of Appeal no. A.No.07/CUS/CLT/2014/399, rejected the appeal.

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

5.1. the appellate authority had not considered the contentions raised by the applicant.

5.2. that the applicant had been intercepted before he had crossed the Customs barrier.

5.3. that the gold bars had not been concealed but placed inside a box in order to secure the same and that this could have been easily detected during the screening of his baggage.

5.4. that he was a non-resident Indian working at Doha, Qatar for more than 25 years and had returned after a continuous stay of 14 months and also the duty amount in foreign currency was available with him which made him eligible to bring upto 1 kg of gold at concessional rate of duty and this fact had not been considered by the lower authorities who had wrongly applied Section 125 of the Customs Act, 1962 had been wrongly applied in his case.

5.5. that the gold bars were not prohibited / restricted goods and benefit of notification 12/2012 should have been extended to him and the goods released on redemption fine.

5.6. the quantum of penalties imposed was excessive and disproportionate to the gravity of the violation.

Applicant has prayed that the Order-in-Appeals passed by the appellate authority be set aside.

6. Personal hearings in the case were scheduled 13.11.2018 & 03.10.2019. After the change of the Revisionary Authority, online hearing was scheduled for 20.08.2021 and 27.08.2021. Shri. Mohammad Zahir, Advocate, appeared online

and reiterated his submissions. He submitted that passenger was eligible and there was no concealment, therefore, goods should have been released on nominal fine and penalty and accordingly requested for the release of the goods.

7. Government has gone through the facts of the case. The Government notes that the Applicant had opted for the green channel and was intercepted at the exit gate while attempting to carry the gold bars without declaring the same to Customs. Applicant had admitted that he did not declare the gold to evade Customs duty. A declaration as required under section 77 of the Customs Act, 1962 was not submitted and therefore the confiscation of the gold was justified.

8. The applicant in his written submissions has stated that he was a non-resident Indian having worked at Doha, Qatar for 25 years and that he had returned back after a continuous stay of 14 months. Also, that he was carrying foreign currency alongwith him for payment of duty at concessional rate. He has stated that by virtue of his continuous stay of 14 months, he was eligible to bring upto 1 kg gold at concessional duty. Also, on the issue of concealment, the applicant has stated that he had not concealed the gold and had kept the same in a geometry box which was placed in his baggage. The same could be easily detected in the scanning machine.

9. The Government finds that neither original authority nor the appellate authority has given any findings on the applicant's submission of being eligible passenger. It is evident that by virtue of his continuous stay abroad, he was eligible to bring upto 1 kg gold at concessional duty. Government observes that gold brought by such eligible persons is not prohibited provided that payment of the concessional duty is made through foreign currency. The applicant has stated that foreign currency was available with him at the relevant time. Contention, if any, that currency was not sufficient to meet requirement of duty payment, will not alter the eligibility based on period of stay abroad, as currency can be arranged subsequently to pay applicable duty for claiming of goods.

10. Government observes that the lower authorities had not allowed redemption of the impugned gold. Also, penalties have been imposed on the applicant under Section 112(a) & (b) of the Customs Act, 1962 and also under Section 114AA of the Customs Act, 1962 which he has contended is excessive and disproportionate.

9. Government observes that 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.), 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. In the instant case passenger being eligible has complied with the conditions, however, failure to declare has rendered goods liable to confiscation.

10. Section 125 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 even in prohibited goods. 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. In view of the foregoing paras, the Government finds that as the applicant had not declared the gold at the time of arrival, the confiscation of the gold was justified. However, the absolute confiscation of the same was not justified in view of the aforesaid facts and option to redeem the same on payment of redemption fine should have been allowed.

12. Government is inclined to accept the averments made by the applicant that by virtue of his continuous stay abroad, he was eligible to bring upto 1 kg of gold at concessional rate of duty to be paid in foreign currency and that the import of gold for such person had not been prohibited. Having held that the confiscation was justified and that the applicant was eligible to bring gold at concessional rate of duty, Government allows the impugned gold to be redeemed on payment of appropriate as redemption fine.

13. Government finds that the penalty of Rs. 5,25,000/- imposed on the applicant under Section 112(a) and (b) of the Customs Act, 1962 was harsh and excessive and is inclined to reduce the same. Government also observes that once penalty has been imposed under section 112(a) and (b) there is no necessity of imposing penalty under section 114AA of the Customs Act, 1962. Therefore, the Government sets aside the penalty of Rs. 2,50,000/- (Rupees Two Lakhs Fifty thousand only) imposed under section 114AA of the Customs Act, 1962.

14. In view of the above, the Government sets aside the impugned order of the Appellate Authority in respect of the impugned gold i.e. 5 gold bars of 10 tolas each, totally weighing 583 gms. The impugned gold i.e. 5 gold bars of 10 tolas and totally weighing 583 gms, having market value of Rs. 17,75,235/- (CIF value of Rs. 14,97,068) is allowed redemption on payment of redemption fine of Rs. 4,25,000/- (Rupees Four Lakhs twenty five thousand only). The impugned gold is allowed to be cleared at concessional rate of duty as per the conditions therein. The penalty of Rs. 5,25,000/- imposed under Section 112(a) and (b) of the Customs Act, 1962 is reduced to Rs.2,50,000/- (Rupees Two lakhs fifty thousand only). The penalty of Rs. 2,50,000/- imposed under Section 114AA of the Customs Act, 1962 is set aside.

10. Revision Application is disposed of on the above terms.

*Shrawan*  
25/10/21  
( SHRAWAN KUMAR )

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

ORDER No. <sup>265</sup> /2021-CUS (SZ) /ASRA/

DATED 25.10.2021

To,

1. Shri. Hameed Chundan Palakkol, S/o. Hussain, Chundan Palakkool House, (PO) Parakkadavu, (via) Nadapuram, Kozhikode.
2. The Commissioner of Customs, Calicut Airport, Karippur 673 647.

Copy to:

1. Shri. Mohammed Zahir, Advocate, Nedungadi Gardens, West Nadakkavu Calicut - 673 011.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File,
4. File Copy.