



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

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F.No. 373/117/B/2016-RA / 6212

Date of Issue 26/10/21

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ORDER NO. 268 /2021-CUS (WZ)/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.

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Applicant : Shri. Keerthi Kumar.

Respondent : Pr. Commissioner of Customs, Hyderabad.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. HYD-CUS-000-APP-179-15-16 dated 31.03.2016 passed by the Commissioner of Customs and Central Excise (Appeals), Basheerbagh, Hyderabad - 500 004.

ORDER

This revision application has been filed by Shri. Keerthi Kumar (herein after referred to as the Applicant) against the Order in appeal No. HYD-CUS-000-APP-179-15-16 dated 31.03.2016 passed by the Commissioner of Customs and Central Excise (Appeals), Basheerbagh, Hyderabad - 500 004.

2. Briefly stated the facts of the case are that the applicant arrived at the RGI Airport on 15.07.2014 from Abu Dhabi on board flight no. EY 8701. He was intercepted at the Exit Gate after he had walked through the green channel facility. On being questioned whether he was carrying any dutiable goods, the applicant replied in the negative. Thereafter, his bags were checked and nothing was found. Then applicant was made to pass through a metal detector and from his person, 8 yellow coloured chains and a gold bar were recovered. The same were assayed and it was found to be of gold. Thus, the 8 gold chains weighing 2000 gms and the gold bar weigh 116 gms (i.e. total 2116 gms of gold) valued at Rs. 59,59,980/- were recovered from the applicant and seized under the reasonable belief that the same were liable for confiscation under the provisions of the Customs Act, 1962 read with Foreign Exchange Management Act, 1999 and Foreign Trade (Development And Regulation Act), 1962.

3. The Original Adjudicating Authority vide Order-In-Original No. 92/2015 dated 08.10.2015 issued through O.R No. 190/2014-Adjn. (Cus) [HQ POR No. 84/2014-Cus. Prev] ordered confiscation of the seized gold weighing 2116 gms and allowed redemption within 60 days on payment of Rs. 6,00,000 (Rupees Six Lakhs) under Section 125(1) of the Customs Act, 1962 and imposed penalty of Rs. 3,00,000/- under Section 112(a)(ii) and Rs. 3,00,000/- under Section 114AA of the Customs Act, 1962. Benefit of concessional rate of duty under notification no. 12/2012-Cus as amended was denied to the applicant.

4. Aggrieved by the said order, the applicant filed an appeal before the Commissioner of Customs and Central Excise (Appeals), Hyderabad who vide Order-In-Appeal No. HYD-CUS-000-APP-179-15-16 dated 31.03.2016 rejected the

appeal and declined to interfere in the Order-in-Original passed by the adjudicating authority.

5. Aggrieved with the aforesaid order dated 31.03.2016 passed by the Commissioner of Customs and Central Excise (Appeals), Hyderabad, the Applicant, has filed this revision application inter alia on the grounds that;

5.1. the appellate authority has passed the order with appreciating basic facts as well as law.

5.2. that the gold had not been concealed and had been recovered from the neck and pocket of the applicant. The applicant has cited (a). Vigneswaran Sethuraman v/s. UOI {2014 (308) ELT 394 (KER)} where the High Court has stated that the body of the passenger cannot be said to be baggage and therefore, it is not necessary for the petitioner to declare the gold chain worn by him, (b) Uma Balasaraswathi v/s. Collector of Customs, {1988 (37) ELT 106 (Tribunal)} where it was held that confiscation of gold bangles worn on passenger's person, not concealed and confiscation not proper under Section 111(1) of the Customs Act, 1962. Both these case laws were relied upon but the appellate authority has not considered the same.

5.3. the applicant has stated that short visit was not indicative of intentions to smuggle gold. The applicant had a work visa and that his company had given him the 2116 gms of gold for making small chains in India and to export them back to Doha.

5.4. Blank declaration form did not amount to false declaration.

5.5. the applicant has stated that the appellate authority has not considered his request for re-export of the seized gold and has not given any finding on his request.

5.6. the applicant has stated that non-speaking order has been passed by the appellate authority which was in violation of the principles of natural justice and judicial discipline.

The Applicant has prayed to set aside, (a). the impugned Order-in-Appeal No. HYD-CUS-000-APP-179-15-16 dated 31.03.2016 passed by the Commissioner of Customs and Central Excise (Appeals), Basheerbagh, Hyderabad – 500 004 with consequential benefits including permission to re-export the seized gold.

6. A personal hearing in the case was scheduled on 30.08.2018, 30.08.2019, 17.08.2021 / 27.08.2021. Shri. Satyamurthy, Advocate appeared on behalf of the Applicant on 30.08.2021 through the online mode and reiterated the submissions already made. He requested that the goods be allowed to be re-exported as original adjudicating authority has already allowed release on R.F.

7. The Government has gone through the facts of the case, and notes that the applicant had not declared gold though he had passed through the green channel. Thereafter, he was asked whether he was carrying any dutiable items to which he had replied in the negative. The applicant had failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. Had he not been intercepted, he would have walked away with the impugned goods without declaring the same to Customs. Even when he was made to pass through the metal detector, the applicant did not disclose about the gold in his possession which indicates that the applicant did not intend to declare the same to Customs. The Government finds that the confiscation of the gold is therefore justified.

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. The Government finds no infirmity with the lower adjudicating authority holding that the applicant was not eligible to import gold under notification no. 12/2012-Customs dated 17.03.2012 or as amended and Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993. The passenger was at Doha only for a period of 2 days. As per notification no. 12/2012 dated 17.03.2021, as amended, eligible passengers of Indian Origin or having a valid Indian passport and have stayed for more than six months abroad are permitted to bring gold upto 1 kkg under concessional rate of duty of 10% Adv. The applicant had departed from India on 13.07.2014 and returned back on 15.07.2014 after a stay of 2 days abroad. Thus, the applicant was not eligible for the benefit under notification no. 12/2012 dated 17.03.2012 and was required to pay Customs duty of 35% on the tariff value of gold on the date of seizure, Education Cess of 2% on the Customs duty, Secondary Higher Education cess of 1% on Customs duty in terms of sub-section (2) of Section 125 of Section 125 of the Customs Act, 1962 when the goods are cleared on redemption.

11. The Government finds that appellate authority has upheld the order of the lower adjudicating authority granting the applicant an option to redeem the seized gold on payment of Rs. 6,00,000/- (Rupees Six lakhs) under the provisions of Section 125(l) of the Customs Act, 1962 to be paid within 60 days of the receipt of the order. The appropriate duty was allowed to be paid in terms of sub-section (2) of Section 125 of the Customs Act, 1962.

12. The Government finds that the redemption fine of Rs. 600000/- imposed by the lower adjudicating authority for the release of goods is reasonable as it constitutes only about 10% of the seizure value.

13. Government finds that penalty of Rs. 3,00,000/- has been imposed under Section 112(a)(ii) and penalty of Rs. 3,00,000/- 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*".

14. 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."*

15. 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. 3,00,000/- (Rupees Three lakhs only) imposed under section 114AA of the Customs Act,1962 is liable to be set aside.

16. On the issue of request for re-export of the goods, Government observes that the request had not been made before the lower adjudicating authority and has been made first time before the appellate authority. Government finds this request to be an afterthought. Moreover, as pointed out in the aforesaid paras, where it is held that the applicant is not eligible for the importation of gold on account of period of stay, non-declaration of dutiable goods in the Customs Declaration Form, etc, Government is not inclined to grant the permission for re-export of the seized gold and hence, the request to re-export the gold is rejected.

19. Revision Application is disposed of on above terms.

*Shrawan*  
25/10/21  
( SHRAWAN KUMAR )  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. 268 /2021-CUS (WZ) /ASRA/

DATED 25.10.2021

To,

1. Shri. Keerthi Kumar, S/o Gulab Chand, 5-3-846#405, 4<sup>th</sup> Floor, Sai Ruchi Apartments, Maalakunta Road, Goshamahal, Hyderabad - 500 012.
2. Principal Commissioner of Customs, Hyderabad Customs Commissionerate, Kendriya Shulk Bhavan, L B Stadium Road, Basheerbagh, Hyderabad - 500 004.

Copy to:

3. M/s. Satyamurthy, Advocate, Mark Professional Services Pvt. Ltd, Flat - 203, Everest Block, Aditya Enclave, Ameerpet, Hyderabad - 500 038.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File. ,
6. File Copy.