



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

F.No 373/64/B/17-RA / 7027

Date of Issue 03.12.2021

ORDER NO. 299/2021-CUS (SZ)/ASRA/MUMBAI
DATED 02.12.2021 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. Muhamed Ali

Respondent : Pr. Commissioner of Customs, Tiruchirapalli - I, Pin : 620
007.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
TCP-CUS-000-APP-003-17 dated 10.01.2017 [A.No. C24 /
82 / 2016-TRY(CUS)] passed by the Commissioner of Central
Excise (Appeals-II), Trichirappalli - 620 001.

ORDER

This revision application has been filed by Shri. Muhamed Ali (herein referred to as Applicant) against the Order in Appeal No. TCP-CUS-000-APP-003-17 dated 10.01.2017 [A.No. C24/82/2016-TRY(CUS)] passed by the Commissioner of Central Excise (Appeals-II), Trichirappalli - 620 001.

2. The brief facts of the case are that the appellant had arrived at Trichy Customs Airport by flight no. IX 682 on 20.08.2016 after visiting Malaysia for 2 days. The applicant had filed a Customs Declaration Form to the effect that he was not in possession of any dutiable goods like gold etc. Upon enquiry by the Customs Officer about possession of any gold in any form either in baggage or on his person, the applicant had replied in the negative. On persistent questioning by the Officers, the applicant admitted that he had one gold chain weighing about 48 gms in his possession which he had brought for monetary gain. The applicant did not have any valid permit / licence / document for the legal import of the said gold chain.

3. After due process of law, the adjudicating authority viz, Asst. Commissioner of Customs, Trichy Airport, vide Order-In-Original No. 113/2016 dated 21.08.2016 [OS No. 79/Batch B] ordered for the absolute confiscation of the said gold chain weighing 48 grams and valued at Rs.1,43,088/- under Sec 111(d), 111(1),111(m) and 111(o) of Customs Act, 1962 and imposed a penalty of Rs.15,000/- under Sec 112(a) of Customs Act, 1962.

4. Aggrieved by the said Order dated 21.08.2016, the applicant filed an appeal before the Commissioner (Appeals-II), Trichirappalli who vide Order-In-Appeal No. TCP-CUS-000-APP-003-17 dated 10.01.2017 [A.No. C24/82/2016-TRY(CUS)], rejected the appeal and upheld the Order-In-Original.

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

- 5.1. that the order of the appellate authority was contrary to law, weight of evidence and probabilities of the case.
- 5.2. that the appellate authority had committed a grave error in confirming the alleged offences under the Sections.
- 5.3. that the appellate authority had ordered the penalty only on presumptions, surmises and conjectures which were not relevant to the circumstances of the case.
- 5.4. that the appellate authority had not applied his judicial mind before passing the aforesaid order.

The applicant in his revision application has prayed to examine the legality and propriety of the order passed by the appellate authority and revise / wave the penalty.

6. Personal hearings in the case was scheduled for 31.10.2018, 20/21.11.2018. Thereafter, personal hearing through the online video conferencing mode were scheduled online for 02.11.2021 / 09.11.2021. Shri. S. Raju, Advocate for the applicant appeared online on 09.11.2021 and requested for releasing the gold jewellery as the applicant was wearing the jewellery; is not a habitual offender; the quantity was small and jewellery was for personal use.

7. At the outset, the Government notes that the Applicant had filed a 'Nil' Customs declaration form for possession of any dutiable goods and upon being queried had initially replied in the negative for possession of dutiable goods. A declaration as required under section 77 of the Customs Act, 1962 was not submitted and therefore the confiscation of the gold chain is justified.

8. 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.

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 the 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 quantity of gold jewellery under import is small and is not of commercial quantity. The gold jewellery had not been ingenuously concealed. There are no allegations that the applicant is a habitual offender and was involved in similar

offence 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 the Customs Act, 1962 and while deciding quantum of penalty to be imposed.

12. The absolute confiscation of the gold, leading to dispossession of the applicant of the gold in the instant case is therefore harsh and not reasonable. Government therefore, sets aside the impugned order of the appellate authority. The impugned gold chain weighing 48 gms and having market value of Rs. 1,43,088/- is allowed redemption on payment of Rs. 30,000/- (Rupees Thirty Thousand only). The Government finds that the penalty of Rs. 15,000/- (Rupees Fifteen thousand only) imposed under Section 112(a) of the Customs Act, 1962 is appropriate and commensurate with the omission and commission committed and is not inclined to interfere in the same.

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

Shrawan
2/12/21
(SHRAWAN KUMAR)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. /2021-CUS (SZ) /ASRA/ DATED 12.2021

To,

1. Shri. Muhamed Ali, S/o. Syed Muhamed Ismail, No. 37 - 29, Quaide Millath Colony, West Chinthamani, Trichy Urban - 620 002.
2. The Pr. Commissioner of Customs, No. 1, Williams Road, Tiruchirappali - I, Pin : 620 001.

Copy to:

1. Shri. S. Raju, Advocate, Anandam Avenue No. 25, Reynolds Road, Near YWCA Bus Stop, Cantonment, Trichy - 620 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File,
4. File Copy.
5. - Notice Board.