



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

F.No 373/19/B/17-RA

7026

Date of Issue 03.12.2024

ORDER NO. 300/2021-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. Ganesan Margandan

Respondent : Pr. Commissioner of Customs, Chennai Pin : 600 027.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal C. CUS-I No.
314/2016 dated 23.09.2016 [C4-I/235/O/2016-AIR] passed
by the Commissioner of Customs (Appeals-I), Chennai 600
001.

ORDER

This revision application has been filed by Shri. Ganesan Margandan (herein referred to as Applicant) against the Order in Appeal No. C. CUS-I No. 314/2016 dated 23.09.2016 [C4-I/235/O/2016-AIR] passed by the Commissioner of Customs (Appeals-I), Chennai 600 001.

2. Briefly stated the facts of the case are that the Applicant who is a Malaysian National, was intercepted when he arrived at the Anna International Airport on 22.12.2015, while he was exiting from the green channel. The applicant had arrived from Kula Lumpur by Air Asia Flight No. AK-011/22.12.2015 and had filed a 'nil' Customs Declaration Form for possession of dutiable goods. The search of the applicant led to the recovery of 4 crude gold bangles kept in the right pocket, a cut piece of gold, 2 rings from the left pocket of the pant worn by him. The gold was of 24 carat purity, totally weighing 424.5 gms with a market value of Rs. 10,85,871/-. As the applicant had attempted to smuggle the gold by not declaring the same and by way of concealing it and as he was not in possession of any document, the gold was seized for further action under the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development & Regulation) Act, 1992.

3. The Original Adjudicating Authority viz, Addl. Commissioner of Customs (Airport), Chennai vide Order-In-Original No. 14/2016-17 Airport [F.No. O.S. No. 1358/2015-AIR] dated 25.04.2016, ordered for the absolute confiscation of the impugned gold under Section 111 (d) & (l) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development & Regulation) Act, 1992, and imposed a penalty of Rs. 1,00,000/- (Rupees One lakh only) under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C. CUS-I No. 314/2016 dated 23.09.2016 [C4-I/235/O/2016-AIR] rejected the appeal of the Applicant.

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

- 5.1. that the order of the adjudicating authority was arbitrary in nature as at no point an attempt was made to clear the gold without payment of duty.
- 5.2. that the adjudicating authority had not appreciated the evidence which was in favour of the applicant.
- 5.3. that the adjudicating authority ought not to have imposed the hefty penalty of Rs.1,00,000/- and ought not to have denied the applicant the opportunity of re-export of the impugned gold.
- 5.4. that the original adjudicating authority failed to appreciate that there was no allegation of concealment or attempt to smuggle without any declaration, whatsoever by the applicant, to deny him the eligibility of legal import/re-export of the impugned gold.
- 5.5. that the original adjudicating authority had deprived the applicant of the impugned gold by confiscation to the Government and the applicant has been put to extreme hardships and misery, having a telling effect on his family life.
- 5.6. that the seized ornaments were their personal belongings and these were fairly old and were not meant for sale. They had come to India to attend a family function and for medical treatment and had return tickets also.
- 5.7. that he and his wife were foreign nationals and the gold was worn by them when they entered India and had not contravened any provisions of the Customs Act, 1962.

The applicant in his revision application has prayed to (i). set aside the order-in-original passed by the original authority and upheld by the Appellate Authority, (ii). allow the redemption of the impugned gold, (iii). permit the re-export of the impugned gold upon redemption by extending the benefit of Section 125 of the Customs Act, 1962, (iv). permit the applicant to clear the impugned gold for home

consumption on payment of merit rate of duty or (v). extend the benefit of eligible free allowance on the import.

6. Personal hearings in the case was scheduled for 14.11.2018. Thereafter, personal hearing through the online video conferencing mode were scheduled for 02.11.2021 / 09.11.2021. The applicant alongwith his Consultant viz, Mr. R. Arunachalam appeared online on 09.11.2021 and submitted that the gold jewellery was brought for marriage purposes by the applicant who generally resides in Malaysia as he works there. They further submitted that jewellery was not concealed; its ownership was not in dispute; it was not for commercial purpose; applicant is not a habitual offender. They requested to release the jewellery on nominal RF and penalty. In the written submission dated 10.11.2021, the applicant had reiterated the contentions raised in their revision application.

7. At the outset, the Government notes that the Applicant had been intercepted near the exit gate after he had passed through the green channel. Applicant had filed 'Nil' Customs declaration form for possession of any dutiable goods and upon being queried had 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 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 quantum of gold under import is small and is not of commercial quantity. The gold had not been ingenuously concealed. The applicant was a foreign national and has claimed that he was in possession of a return ticket. 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 jewellery, leading to dispossession of the applicant of the gold jewellery in the instant case is therefore harsh and not justified. Government therefore, sets aside the impugned order of the appellate authority. The impugned gold in the form of 4 crude gold bangles and 2 gold rings, totally weighing 424.5 gms having market value of Rs. 10,85,871/- are allowed redemption on payment of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand only). The Government finds that the penalty of Rs. 1,00,000/- (Rupees One Lakhs only) imposed under Section 112(a) of the Customs Act, 1962 is appropriate and commensurate with the omissions and commissions committed and is not inclined to interfere in the same.

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


21/12/21
(SHRAWAN KUMAR)

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

ORDER No 300/2021-CUS (SZ) /ASRA/

DATED 02.12.2021

To,

1. Shri. Ganesan Margandan, No. 201, Block - 15, Jalan Nuri, 7/1C, Kota Damansara - 47810, Petaling Jaya, Selangor, D.E. Malaysia.
2. The Pr. Commissioner of Customs, Anna International Airport, Meenambakkam, Chennai - 600 027.

Copy to:

1. Shri. R. Arunachalam, Consultant, AB Consultancy Services, Flat No. 3, Kavya Home, First Floor, Kala Flats, 84/78, Dr. Ranga Road, Mylapore, Chennai - 600 004.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File,
4. File Copy.
5. Notice Board.