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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No. 373/175/B/16-RA

9036

Date of Issue 03.12.2024

ORDER NO. 304 /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. Abdul Malik

Respondent : Pr. Commissioner of Customs, Kempegowda International
Airport, C. R. Building, Queens Road, Bangalore 560 001.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
362/2016 dated 21.04.2016 [A.No. 517/2015 Cus.(B-
Air)/532/2016 passed by the Commissioner of Customs
(Appeals), Bengaluru 560 001.

ORDER

This revision application has been filed by Shri. Abdul Malik (herein referred to as Applicant) against the Order in Appeal No. 362/2016 dated 21.04.2016 [A.No. 517/2015 Cus.(B-Air)/532/2016] passed by the Commissioner of Customs (Appeals), Bengaluru 560 001.

2. Briefly stated the facts of the case are that the Applicant was intercepted when he arrived at the Kempegowda International Airport, Bengaluru on 24.04.2014, while he had walked past the green channel after having handed over a 'nil' Customs Declaration Form. The applicant had arrived from Colombo, onboard Sri Lankan Flight No. UL-171/24.04.2014. The examination of his baggage did not result in the recovery of any dutiable goods. However, examination of his person resulted in the recovery of one silver coated kada weighing 388.45 gms made of gold and one gold chain (crude) weighing 461.80 gms. Thus, gold kada and gold chain which were of 24 carats, weighing 850.25 gms in total and valued at Rs. 27,75,106 worn by the applicant was recovered.

3. The Original Adjudicating Authority viz, Additional Commissioner of Customs, Bengaluru vide Order-In-Original No. 83/2014-15 CUS dated 26.03.2015 [F.No. VIII/48/27/119/2015-AP] ordered for the absolute confiscation of the gold kada and chain, totally weighing 850.25 gms and imposed a penalty of Rs. 5,20,000/- (Rupees Five Lakhs Twenty thousand only) under Section 112 (a) of the Customs Act, 1962 and also imposed a penalty of Rs. 2,60,000/- (Rupees Two Lakhs Sixty Thousand only) under Section 114AA of the Customs Act, 1962 on the applicant.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals), Bengaluru who vide Order-In-Appeal No. 362/2016 dated 21.04.2016 [A.No. 517/2015 Cus.(B-Air)/532/2016] 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 seized gold kada and gold chain were worn by him at the time of his departure from Bangalore to Colombo and he had returned with it.

5.2. that no evidence had been placed on record that the gold was of foreign origin.

5.3. that he was a law abiding citizen and had never been punished for contravention of any of the laws in India or the countries visited by him.

5.4. that he had requested for the CCTV footage which would indicate that he had worn the gold while departing from India and has contested the facts recorded in the Mahazar

Applicant has prayed for setting aside the order of absolute confiscation, penalty and personal penalty or in the alternative to reduce the penalty and personal penalty.

6. Personal hearings in the case was for 12.11.2018. Due to change in the revisionary authority personal hearings through the online video conferencing mode were scheduled for 20.08.2021 / 27.08.2021, 26.10.2021 / 09.11.2021. Applicant appeared on line on 09.11.2021 and submitted that the gold belonged to him and requested for release on reasonable RF and penalty. He also submitted that he was not a habitual offender.

7. The Government has gone through the facts of the case, and notes that the applicant had passed through the green channel and had failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. The applicant had not disclosed that he was carrying dutiable goods and had he not been intercepted would have walked away with the impugned goods without declaring the same to Customs. Also, the gold kada was

silver coated to escape detection and consequently, evade Customs duty. The silver coating clearly reveal intention of the applicant to ingeniously conceal the gold and it is evident that the applicant had not intended 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. 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 notes that the quantity of gold is quiet substantial and was in crude form, the appellate authority has observed that '24 karat jewellery is in crude form and is only bullion which is ingeniously concealed in the form of jewellery'. Had it not been due to the alertness and diligence of the officers manning the exit gate, the applicant would have gotten away with the impugned gold without discharging the duty. The Applicant has pleaded for setting aside the Order passed by the Lower Adjudicating Authority which has been upheld by the Appellate Authority. On considering quantum, form, manner of concealment and clear attempt to smuggle gold, plea of the applicant does not deserve consideration. 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. This also would act as a deterrent for attempting to smuggle the gold.

12. With regard to the penalty of Rs. 5,20,000/- imposed under Section 112(a) of the Customs Act, 1962, the Government finds that the applicant had worn the impugned gold jewellery though had consciously kept it covered with his shirt. Considering complete facts of the case, the penalty of Rs. 5,20,000/- is harsh and the Government is inclined to reduce the same to Rs. 3,50,000/- (Rupees Three Lakhs Fifty Thousand only).

13. Government notes that once penalty has been imposed under section 112(a) of the Customs Act, 1962 there is no necessity of imposing penalty under Section 114AA of the Customs Act, 1962. Therefore, the penalty of Rs. 2,60,000/- (Rupees Two lakhs sixty thousand only) imposed under Section 114AA of the Customs Act, 1962 is set aside.

14. The Revision Application is accordingly disposed of on the above terms.

Shrawan
2/12/21
(SHRAWAN KUMAR)

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

ORDER No. ³⁰⁴ 2021-CUS (SZ) /ASRA/

DATED 2-12-2021

To,

1. Shri. Abdul Malik, S/o. Amjad Basha, Residing at No. 30, Muniga Layout, Maruthi Seva Nagar, Bengaluru : 560 003.
2. The Commissioner of Customs, Kempegowda International Airport, C. R. Building, Queens Road, Bangalore 560 001.

Copy to:

1. Singh & Singh Associates, Bijali Shamendra Singh, No. 95/9, 1st Floor, 24th Cross, Cubbonpet Main Road, Bengaluru - 560 002.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File,
4. File Copy.
5. Notice Board.