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SPEED POST



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.371/429/B/WZ/2019-RA: 6171

Date of Issue : 01/11/2022

ORDER NO. 311 /2022-CUS (WZ)/ASRA/MUMBAI DATED 31.10.2022  
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.

(i). F.No.371/429/B/WZ/2019-RA

Applicant : Shri. Osman Imam Imamdeen

Respondent : Pr. Commissioner of Customs, CSMI Airport, Mumbai

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-339/19-2020 dated 30.07.2019 issued on 13.08.2019 through F.No. S/49-733/2019 passed by the Commissioner of Customs (Appeals), Mumbai - III.

**ORDER**

This revision application has been filed by Shri. Osman Imam Imamdeen (hereinafter referred to as the Applicant) against the Order-in-Appeal No.MUM-CUSTM-PAX-APP-339/19-2020 dated 30.07.2019 issued on13.08.2019 through F.No. S/49-733/2019 passed by the Commissioner of Customs (Appeals), Mumbai – III.

2(a). Brief facts of the case are that the applicant who is a Sri Lankan national was intercepted on 10.12.2018 by Customs Officers at CSMI Airport, Mumbai, on his arrival from Dubai onboard Jet Airways Flight No. 9W-0543 / 09.12.2018 after a stay of two days. Applicant had opted for the green channel. Personal search of the applicant resulted in the recovery of a crude gold chain and a gold ring, collectively weighing 120 grams and valued at Rs. 3,40,095/-

3. The Original Adjudicating Authority (OAA), viz, Asstt. Commissioner of Customs, CSMI Airport, Mumbai vide Order-In-Original No. Air Cus/49/T2/1174/2018-'C' dated 10.12.2018 ordered for the absolute confiscation of the impugned crude gold chain and gold ring, weighing 120 grams and valued at Rs. 3,40,095/- under Section 111(d) of the Customs Act, 1962 and a penalty of Rs. 25,000/- under Section 112 of the Customs Act, 1962 was also imposed on the applicant.

4. Aggrieved by the said order, the applicant preferred an appeal before the appellate authority (AA) viz, Commissioner of Customs (Appeals), Mumbai - III, who vide Order-In-Appeal No. MUM-CUSTM-PAX-APP-339/19-2020 dated 30.07.2019 issued on13.08.2019 through F.No. S/49-733/2019 did not find

any reason to interfere with the OIO passed by the OAA and disposed of the appeal.

5. Aggrieved with the above order of the appellate authority, the Applicant has filed this revision application on the grounds that in similar cases the lower authorities have granted re-shipment and also the revisional authorities has allowed re-shipment. Applicant made a plea to refer and rely upon similar orders during the hearing.

Applicant has prayed to the Revision Authority to set aside the absolute confiscation and allow re-shipment or to grant such relief as deemed fit.

6. Personal hearing through the online video conferencing mode was scheduled for 10.08.2022, 24.08.2022. Shri. Prakash Shingrani, Advocate for the applicant appeared for personal hearing on 24.08.2022 and submitted that applicant is a Sri Lankan national and has worn small quantity of jewellery. He requested to allow re-export of the goods.

7. The Government has gone through the facts of the case and notes that the applicant had failed to declare the dutiable goods in his possession as required under Section 77 of the Customs Act, 1962. The applicant had not disclosed that he was carrying / wearing dutiable goods and had he not been intercepted would have walked away with the impugned gold jewellery without declaring the same to Customs. By his actions, it was clear that the applicant had no intention to declare the impugned gold jewellery to Customs and pay Customs duty on it. The Government finds that the confiscation of the gold jewellery 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 ‘applicant’ thus, liable for penalty.

10. 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. The Government notes that the quantum of gold recovered from the applicant is very small, that applicant was a foreign national, that applicant had worn the gold jewellery, that applicant had not concealed the gold jewellery. There is no case made out that the applicant is a repeat offender. At best this case can be termed as a case of non-declaration of gold jewellery rather than smuggling of gold. In the OIA, the AA has observed that another passenger had been apprehended on the same flight and similar quantity of

gold jewellery was recovered and has concluded that the applicant is part of a syndicate involved in smuggling of gold. Government finds that this conclusion arrived at by the AA without any corroborative evidence is not sustainable.

12. In a recent judgement passed by the Hon'ble High Court, Madras on 08.06.2022 in WP no. 20249 of 2021 and WMP No. 21510 of 2021 in r/o. Shri. Chandrasegaram Vijayasundarm + 5 others in a similar matter of foreign nationals wearing 1594 gms of gold jewellery (i.e. around 300 gms worn by each person) upheld the Order no. 165 – 169/2021-Cus (SZ) ASRA, Mumbai, dated 14.07.2021 in F.No. 380/59-63/B/SZ/2018-RA/3716, wherein Revisionary Authority had ordered for the confiscation of the gold jewellery but had allowed the same to be released for re-export on payment of appropriate redemption fine and penalty.

13. The Government finds that this is a case of non-declaration of the gold jewellery. The facts of the case reveals that the applicant had worn the gold jewellery. There is no dispute regarding ownership of the gold jewellery. There are no allegations of previous offences registered against the Applicant. Thus, mere non-submission of the declaration cannot be used to deprive the applicant of the gold jewellery, more so because he is a foreign national and had worn the gold ornaments. Considering the afore-stated facts, Government therefore, is inclined to allow the impugned gold jewellery to be re-exported on payment of a redemption fine as specifically prayed for by the applicant. In view of the same, the Government is inclined to modify the order passed by the appellate authority.

14. The Government finds that the personal penalty of Rs. 25,000/- imposed on the applicant under Section 112 of the Customs Act, 1962 is commensurate with the omissions / commissions committed.

15. In view of the above, the Government modifies the order passed by the appellate authority and allows the applicant to redeem the impugned gold jewellery for re-export as prayed for, on payment of a redemption fine of Rs. 65,000/- (Rupees Sixty Five Thousand only). The penalty amount of Rs. 25,000/- is upheld.

16. The Revision application is disposed of on the above terms.

*Shrawan Kumar*  
31/10/22  
( SHRAWAN KUMAR )

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

ORDER NO. 311 /2022-CUS (WZ)/ASRA/MUMBAI DATED 31.10.2022.

To,

1. Shri. Osman Imam Imamdeen, (Sri Lankan National – address not available in the records) c/o address:- Shri. Prakash Shingrani, 12/334, Vivek, New MIG Colony, Bandra East, Mumbai – 400 051.
2. Pr. Commissioner of Customs, Adjudication Cell, Chhatrapati Shivaji Maharaj International Airport, Sahar, Andheri West, Mumbai – 400 099.

Copy to:

1. Shri. Prakash Shingrani, 12/334, Vivek, New MIG Colony, Bandra East, Mumbai – 400 051 Sr. P.S. to AS (RA), Mumbai.
2. File Copy.
3. Notice Board.