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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. 371/20/B/17-RA(MUM) 1798

Date of Issue 09.12.21

ORDER NO. 312/2021-CUS (WZ)/ASRA/MUMBAI  
DATED 07.12.2021 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. Mohammed Sadiq.

Respondent : Pr. Commissioner of Customs, CSI, Mumbai.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
MUM-CUSTM-PAX-APP-504/17-18 dated 14.09.2017  
[S/49-868/2015/AP passed by the Commissioner  
of Customs (Appeals), Mumbai - III.

ORDER

This revision application has been filed by Shri. Mohammed Sadiq (herein after referred to as the Applicant) against the Order-in-appeal No. MUM-CUSTM-PAX-APP-504/17-18 dated 14.09.2017 [S/49-868/2015/AP] passed by the Commissioner of Customs (Appeals), Mumbai – III.

2. Brief facts the case are that the applicant, arrived at CSI Airport, Mumbai from Bangkok onboard Jet Airways Flight No. 9W 067/11.05.2014 and was intercepted by Officers of Customs at the exit gate. To the query whether he was carrying any dutiable items, the applicant had replied in the negative. During the search of the baggage of the applicant, 4 gold chains totally weighing 317 gms were found. Personal search of the applicant resulted in the recovery of an unusually heavy wrist watch, the complete dial of which was made of gold which weighed 454 gms. Thus, a total of 771 grams of gold, valued at Rs. 19,79,828/- was seized from the applicant under Section 111(d), (l) and (m) of the Customs Act, 1962.

3. The Original Adjudicating Authority viz the Addl. Commr. Of Customs, CSI, Mumbai. vide Order-In-Original No. ADC/ML/ADJN/134/2015-16 dated 24.08.2015 [F.No. S/14-5-384/2014-15 ADJ – SD/INT/AIU/321/2014 AP B] ordered for the absolute confiscation of the gold, totally weighing 771 grams and valued at Rs. 19,79,828/- under Section 11(d), (l), and (m) of the Customs Act, 1962. Also, a penalty of Rs. 2,00,000/- under Section 112(a) and (b) of the Customs Act, 1962 was imposed on the applicant.

4. Aggrieved by the said order, the applicant filed an appeal before the Commissioner of Customs (Appeals), Mumbai – III who vide Order-In-Appeal No. MUM-CUSTM-PAX-APP-504/17-18 dated 14.09.2017 [S/49-868/2015/AP] did not find it necessary to interfere in the order passed by the original adjudicating authority and accordingly, disposed of the appeal.

5. Aggrieved with the aforesaid order dated 14.09.2017 passed by the Commissioner of Customs (Appeals), Mumbai - III, the Applicant has filed this revision application inter alia on the grounds that;

5.1. that the impugned orders passed by the appellate authority was bad in law and unjust.

5.2. that the impugned orders were passed without giving due consideration to the documents on record and facts of the case.

5.3. that the Adjudicating authority ought to have appreciated that dutiable goods brought in by the Applicant were neither restricted nor prohibited.

5.4. that this type of goods had been brought by the applicant for the first time and there was no previous case registered against him.

5.5. that the SCN issued clearly indicates that the goods are dutiable goods and not prohibited goods.

5.6. that option of redemption under Section 125 of the Customs Act, 1962 ought to have been given considering that the impugned goods are dutiable goods.

5.7. to buttress their case, the applicant has relied on various case laws and citations.

Applicant has prayed that the impugned gold may be released under Section 125 of the Customs Act, 1962 on nominal redemption fine and penalty or any other order as deemed fit and proper.

6. Online personal hearings in the case were scheduled for 16.11.2021 / 23.11.2021. Shri. N. Heera and Shri. A. M Sachwani, both Advocates appeared and reiterated their earlier submissions. They submitted that quantity of gold and jewellery is small and same may be released on reasonable fine and penalty.

7. Applicant has filed for condonation of delay. Government notes that the revision application has been filed on 27.12.2017 which is within the extended period of 6 months (i.e. 3 months + 3 months) as prescribed in Section 129DD (2) of the Customs Act, 1962. Accordingly, Government condones the delay.

8. At the outset, the Government notes that the Applicant had brought the gold in the form of chains and a watch dial. The applicant on being queried had replied in the negative for possession of dutiable goods. A true declaration as required under section 77 of the Customs Act, 1962 for possession of any dutiable goods was not submitted and therefore the confiscation of the gold was justified and the applicant had rendered himself liable for penal action for his act of omission and commission.

9. The seriousness of the misdemeanour is required to be kept in mind when using discretion under Section 125 of Customs Act, 1962 and while imposing quantum of penalty. 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.

10. 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.

11. Government notes that the gold was carried / worn as chains and watch. Government also notes that the quantum of the impugned gold was weighing 771 grams which is not a large quantity. There was no ingenious concealment in the case. Under the circumstances, considering the quantum, form, manner of keeping the gold jewellery and gold watch coupled with applicant not being habitual offender, the Government finds that the order of absolute confiscation passed by the lower adjudicating authority and upheld by the appellate authority, is excessive and harsh.

12. Also, in a recent case, discretion of the authorities to consider the release of the goods was decided by the Apex Court wherein 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.*

13. The Government finds that considering quantum, form, manner of keeping / carrying gold jewellery / watch, applicant not being habitual offender and taking into account overall facts and circumstances, request of

applicant to allow release of jewellery / watch on RF is reasonable. Consequently gold jewellery / watch valued at Rs. 19,79,828/- is ordered to be released on RF of Rs. 5,25,000/- (Rupees Five Lakhs Twenty Five Thousand only).

14. Considering the facts and value of goods as discussed above, the Government finds that the penalty of Rs. 2,00,000/- imposed under Section 112 (a) and (b) of the Customs Act, 1962 is appropriate and is not inclined to interfere with the same.

15. The Revision Application is decided on above terms.

*Shrawan*  
7/12/21  
( SHRAWAN KUMAR )

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

ORDER No.

312/2021-CUS (WZ) /ASRA/

DATED

07. 12.2021

To,

1. Shri. Mohammed Sadiq, 1593, BDA - IIIrd Stage, 48<sup>th</sup> Block, Austin Tower, Bangalore, Karnataka - 560 047.
2. Pr. Commissioner of Customs, Terminal - 2, Level - II, CSI Airport, Mumbai 400 099.

Copy to:

3. Shri. N. Heera, Advocate, Nulwala Building, 41, Mint Road, Opp. G.P.O, Fort, Mumbai - 400 001.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File. ,
6. File Copy.
7. Notice Board.