



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

F.No. 371/21/B/17-RA (MUM)

7767

Date of Issue 09.12.21

ORDER NO. 313 /2021-CUS (WZ)/ASRA/MUMBAI
DATED 06 .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. Moosa Mohammed Moideen

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

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. MUM-
CUSTM-PAX-APP-529/17-18 dated 22.09.2017 {S/49-
932/2015/AP} passed by the Commissioner of Customs
(Appeals), Mumbai - III.

ORDER

This revision application has been filed by Shri. Moosa Mohammed Moideen (herein referred to as Applicant) against the Order-In-Appeal No. MUM-CUSTM-PAX-APP-529/17-18 dated 22.09.2017 {S/49-932/2015/AP} passed by the Commissioner of Customs (Appeals), Mumbai – III.

2. Brief facts of the case are that the applicant, an Indian passport holder was intercepted by the Customs Officers at CSI Airport, Mumbai on 23.02.2015 after he had cleared himself through Customs Green Channel on arrival from Dubai by Indigo Flight No. 6E-64. The personal search of the passenger resulted in the recovery of 02 gold bars which had been wrapped with black coloured adhesive tape and kept concealed in the right and left pockets of the pants worn by the applicant. The total weight of the gold was found to be 2000 grams and value was ascertained at Rs.49,61,380/-. The applicant on being questioned denied that he had been carrying any gold or contraband in his baggage or on his person. Since, the applicant had not declared the 2 gold bars weighing 2000 gms, the same were seized under the reasonable belief that the same were attempted to be smuggled into India in contravention of the provisions of the Customs Act, 1962.

3. After due process of law, the original adjudicating authority viz, Addl. Commr. Of Customs, CSI Airport, Mumbai, vide Order-in-Original No. ADC/RR/ADJN/207/2015-16 dated 21.10.2015 [S/14-5-217/2015-16 Adjn – SD/INT/AIU/85/2015 AP 'B'.] confiscated the impugned goods under Section 111(d), 111(l) and 111(m) of the Customs Act. 1962 and allowed the applicant to redeem the gold on payment of fine of Rs. 8,90,000/ under Section 125 of the Customs Act 1962 along with Customs duty as applicable. Also, a penalty of Rs.5,00,000/- was imposed on the applicant under Sections 112 (a) and (b) of the Customs Act 1962.

4. Aggrieved by the impugned Order-in-Original, the applicant filed an appeal before the appellate authority which vide Order-In-Appeal No. MUM- CUSTM-

PAX-APP-529/17-18 dated 22.09.2017 {S/49-932/2015/AP} did not find it necessary to interfere in the order passed by the lower authority.

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

- 5.1. that the impugned order passed by the appellate authority was bad in law and unjust.
- 5.2. that the impugned order has been 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 the goods had not been ingeniously concealed but found on his person.
- 5.5. that he Applicant was the owner of the goods and had produced the relevant purchase invoice, as a proof of the same.
- 5.6. that the Applicant had brought this type of goods for the first time and there was no previous case registered against him.
- 5.7. that the violation happened out of ignorance and was technical in nature.
- 5.8. that the fine and personal penalty imposed was higher side.
- 5.9. that the fine and personal penalty was not commensurate with the offence committed and that after the payment of duty, he had been left with NIL profit of margin.

The Applicant has prayed that the Revision Authority be pleased to set aside the orders of the appellate authority and to reduce the redemption fine and personal penalty.

6. Personal hearing in the case in the online video conferencing mode was scheduled for 16.11.2021 / 23.11.2021. Shri. N. Heera and Shri. A. M Advani,

Advocates for the applicant appeared on line on 23.11.2021 and reiterated their submissions and requested to reduce the RF 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. The Government has gone through the facts of the case. The Applicant was intercepted as he was attempting to walk through the green channel after completing immigration formalities. The two gold bars were discovered only when the Applicant was thoroughly checked. The Applicant did not declare the gold bars as required under section 77 of the Customs Act, 1962. The quantum of gold recovered is quite large i.e. 2 kgs, which is of commercial quantity and in the form of bars (of 1 kg each) and it was innovatively concealed to avoid detection. The confiscation of the gold is therefore justified and thus, the Applicant had rendered himself liable for penal action.

9. 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”.

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. 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.

12. Government notes that the applicant had not disclosed that he was carrying gold and had concealed this fact from the Customs which reveals the

intention of the Applicant to evade Customs duty and smuggle the gold into India. The original adjudicating authority had ordered for the confiscation of the gold bars and allowed the same to be redeemed on payment of redemption fine of Rs. 8,90,000/- under Section 125 of the Customs Act, 1962. Government notes that the redemption of the gold bars has not been challenged by the department either at the appellate stage or before the revisionary authority. The option to allow redemption of seized goods is the discretionary power of the adjudicating authority depending on the facts of each case and after examining the merits. Adjudicating Authority has imposed reasonable amount of RF which has been maintained by the Commissioner (Appeals). The Government does not find enough grounds in the application to consider it necessary to interfere in the order passed by the lower authorities.

13. The Government finds that the penalty of Rs. 5 lakhs imposed under section 112 (a) & (b) is appropriate and commensurate with the omission and commission committed by the applicant especially. Government does not find it necessary to interfere in the same.

14. Revision Application is accordingly, dismissed.


(SHRAWAN KUMAR)

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

ORDER No. 313/2021-CUS (WZ) /ASRA/ DATED 06.12.2021

To,

1. Shri. Moosa Mohammed Moideen, 5 417E, PGP Pandiyakha House, PO Paivallilike, Kasargod, Kerala - 671 348.
2. The Pr. Commissioner of Customs, CSI Airport, Terminal - 2, Mumbai 400 099.

Copy to:

1. Shri. N.J Heera, Advocate, Nulwala Bldg, Ground Floor, 41 Mint Road, Opp. GPO, Fort, Mumbai : 400 001.
2. Sf. P.S. to AS (RA), Mumbai.
3. Guard File,
4. File Copy.
5. Notice Board.