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SPEED POST



सत्यमेव जयते

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

F.No. 373/37/B/2017-RA(MUM) / 7321

Date of Issue 22.12.2021

ORDER NO. 314 /2021-CUS (SZ)/ASRA/MUMBAI
DATED 14.12.2021 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. Intiaz Ali Khan.

Respondent : Pr. Commissioner of Customs, Anna International
Airport, Chennai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
C.Cus.I. No. 124/2017 dated 10.07.2017 [F.No. C4-
I/95/0/2017-AIR passed by the Commissioner of
Customs (Appeals_I), Chennai.



ORDER

This revision application has been filed by Shri. Intiaz Ali Khan (herein after referred to as the Applicant) against the Order in appeal No. C.Cus.I. No. 124/2017 dated 10.07.2017 [F.No. C4-I/95/0/2017-AIR passed by the Commissioner of Customs (Appeals_I), Chennai.

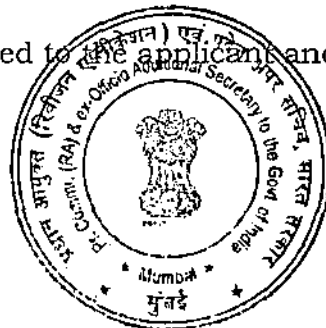
2. Briefly stated the facts of the case are that the applicant who had arrived at Chennai Airport from Kuwait on 16.05.2017, was intercepted by customs officers and on examination of his baggage, two gold cut bits totally weighing 138 grams and valued at Rs.3,59,352/- were recovered. The applicant had not declared the gold to the Customs and was not in possession of any valid document/permit /licence for the legal import of the impugned gold into India and also not an eligible passenger to bring gold into India.

3. After due process of law, the Original Adjudicating Authority viz, Asst. Commr of Customs (Airport), Chennai vide Order in Original No. O. S.No. 322/2017- Batch 'C' dated 16.05.2017 confiscated the gold absolutely and also imposed a penalty of Rs. 15,000/- under Section 112(a) of the Customs Act, 1962.

4. Aggrieved with this order, the applicant filed an appeal before the appellate authority viz, Customs (Appeals_I), Chennai who vide Order-in-Appeal No. C.Cus.I. No. 124/2017 dated 10.07.2017 [F.No. C4-I/95/0/2017-AIR] allowed the impugned gold to be released on payment of a redemption fine of Rs. 80,000/- alongwith applicable duty and did not interfere with the penalty amount imposed by the lower adjudicating authority.

5. Aggrieved with the aforesaid order dated 10.07.2017 passed by the Commissioner (Appeals-I), Chennai, the Applicant has filed this revision application inter alia on the grounds that;

5.1. that the impugned gold belonged to the applicant and was in



possession of the purchase invoice.

- 5.2. that there was no ingenuous concealment.
- 5.3. that gold was a restricted item and not prohibited.

The Applicant has prayed to set aside the impugned Order-in-Appeal and reduce the personal penalty of Rs. 15,000/- imposed under Section 112 (a) of the Customs Act, 1962 or to pass any other order as deemed fit.

6. A personal hearing in the case through the online video conferencing mode was scheduled for 17.11.2021 / 24.11.2021. Shri. Kamalamalar Palanikumar Advocate for the applicant vide her letter dated 23.11.2021 expressed her inability to attend the hearing and requested to pass an order with the available records and show leniency. Accordingly, the case was taken up for disposal on the basis of available records.

7. The Government has gone through the facts of the case, and notes that the applicant had failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. The Government notes that the applicant did not intend to declare the goods to Customs. Therefore, the Government finds that the confiscation of the gold is 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. Government notes that the appellate authority has released the impugned gold on payment of redemption fine of Rs. 80,000/- and did not find it necessary to interfere in the penalty amount imposed on the applicant. Government notes that the quantity of gold was small and not of commercial quantity. At best, this is a case on non declaration of the impugned gold. The issue to be considered in this case is whether the impugned gold cut bits can be allowed to be released on redemption. the Hon'ble Supreme Court of India in Hargovind Das K Joshi *versus* Collector of Customs reported in 1992 (61) ELT 172 has set aside absolute confiscation of goods by Collector without considering question of redemption on payment of fine although having discretion to do so, and remanded the matter to Collector for consideration of exercise of discretion for imposition of redemption fine as per Section 125 of Customs Act. 1962.

11. Moreover, in a recent judgement by the Hon'ble Supreme Court in the case of M/s Raj Grow Impex and others Vs UOI (CIVIL APPEAL NO(s). 2217-2218 of 2021. Arising out of SLP(C) Nos. 14633-14634 of 2020 – Order dated 17.06.2021), it is stated ".....when it comes to discretion, the exercise thereof has to be guided by law; according to the rules of reason and justice; and has to be based on the relevant considerations.....such an exercise cannot be based on private opinion." Government notes that there is no past history of non-declaration/ violation



by the Applicant. The impugned gold was concealed but this at times is resorted to with a view to keep the precious goods secure and safe. However, this concealment cannot be said to be ingenious. The quantity / type of gold was not commercial in nature. The applicant has claimed ownership of the gold. The appellate authority has allowed for the release of the gold cut bits on payment of redemption fine of Rs. 80,000/-. Government notes that the order of the appellate authority is just and judicious and is liable to be upheld.

12. In view of the above, the Government finds that the order passed by the appellate authority is proper and judicious and is not inclined to interfere in the same. The Government finds that the penalty amount of Rs. 15,000/- imposed by the original adjudicating authority and affirmed by the appellate authority is commensurate with the omissions and commissions committed. Government does not find it necessary to interfere in the order of the appellate authority.

13. Revision Application is dismissed.

Shrawan
14/12/21
(SHRAWAN KUMAR)

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

ORDER No. 314/2021-CUS (SZ) /ASRA/ DATED 14.12.2021

To,

1. Shri. Intiaz Ali Khan, S/o. Zamrood Ali Khan, 91/B, Nagavara Main Road, Govindpura Cross, Rashad Nagar, Bangalore, Karnataka.
2. Pr. Commissioner of Customs, Chennai – I (Airport), New Custom House, Meenambakkam, Chennai – 600 027.

Copy to:

3. Shri. Kamalamalar Palanikumar, Advocate, No. 10, Sunkurama Street, Chennai – 600 001, Cell : 9841050029.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File. ,
6. File Copy.
7. Notice Board.

