



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

F.No. 380/31/B/WZ/2019-RA / 7297

Date of Issue 22/12/2021

ORDER NO. 316/2021-CUS (WZ) /ASRA/MUMBAI DATED 15.12.2021 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 : Pr. Commissioner of Customs (Airport), CSI, Mumbai.

Respondent: Shri. Jignesh Praveen Shah.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-1164/18-19 dated, 28.02.2019 [F.No. s/49-474/2016] passed by the Commissioner of Customs (Appeals), Mumbai - III.



ORDER

This revision application has been filed by Pr. Commissioner of Customs (Airport), CSI, Mumbai (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-1164/18-19 dated 28.02.2019 [F.No. s/49-474/2016] passed by the Commissioner of Customs (Appeals), Mumbai - III.

2. Brief facts of the case are that on 19.07.2015, the Officers of Customs had intercepted the Respondent at CSI Airport who had arrived from Dubai by Emirates Flight No. EK 508 dated 19.07.2015. The Respondent had been intercepted near the exit gate after he had cleared himself through the green channel of Customs. To the query put forth to him regarding possession of any dutiable goods, the Respondent had replied in the negative. During personal search of the Respondent, 02 nos of gold chains worn around the waist and 02 nos of gold bars cleverly concealed in the shoes worn were recovered. The gold did not have any markings and totally weighed 2995 gms and was valued at Rs. 72,18,429/- and were seized under the reasonable belief that the same had been smuggled to India in a clandestine manner and in contravention of the provisions of the Customs Act, 1962.

3. After due process of investigations and the law, the Original Adjudicating Authority i.e. the Addl. Commissioner of Customs, CSI Airport, Mumbai, vide Order-In-Original No. ADC/RR/ADJN/276/2016-17 dated 25.08.2016 [F.No. S/14-5-381/2015-16 Adjn / SD/INT/AIU/295/2015 AP B] ordered for the absolute confiscation of the gold, totally weighing 2995 gms and valued at Rs. 72,18,429/- under Section 111 (d), (1) and (m) of the Customs Act, 1962 and a penalty of Rs. 7,50,000/- was imposed on the Respondent under Section 112 (a) and (b) of the Customs Act, 1962.

4. Aggrieved by this Order, the Respondent preferred an appeal before the appellate authority i.e. Commissioner of Customs (Appeal), Mumbai - III, who vide Order-in-Appeal No. MUM-CUSTM-PAX-APP-1164/18-19 dated 28.02.2019 [F.No. s/49-474/2016] allowed the impugned gold to be redeemed on payment of redemption fine of Rs. 13,00,000/- (Rupees Thirteen Lakhs only) and payment of appropriate duty. The penalty of Rs. 7,50,000/- under Section 112(a) & (b)



imposed on the applicant by the Original Adjudicating Authority was however, upheld.

5. Aggrieved by this Order, the applicant has filed this revision application on the undermentioned grounds of revision;

- 5.1. that the order passed by the appellate authority was not legal and proper.
- 5.2. that the impugned gold viz 02 nos of chains and 02 nos of gold bars had been cleverly and intentionally concealed. The chains had been worn around the waist and the gold bars having been concealed in the shoes worn by the Respondent.
- 5.3. that the Respondent in his statement recorded on 20.07.2015 under section 108 of the Customs Act, 1962, had admitted knowledge, possession, concealment, carriage, non-declaration and recovery of the 02 gold chains and 02 gold bars; that the gold totally weighing 2995 grams did not belong to him and was carrying the same on instructions for a monetary consideration.
- 5.3. that the manner of recovery of the gold indicates concealment was not only ingenious but also premeditated and a deliberate act to evade Customs duty. The circumstances of the case and the intention of the Respondent was not at all considered by the Appellate Authority while giving the respondent an option to redeem the seized goods on payment of a fine.
- 5.4. that taking into account the facts on record and the gravity of the offence, the lower adjudicating authority had rightly ordered the absolute confiscation of the impugned gold. The Respondent had ingeniously concealed 02 gold bars in his shoes and 02 gold chains worn on his waist, which clearly showed his intention to evade duty and to smuggle the impugned gold into India. Had the Respondent not been intercepted he would have made good with the impugned goods. Such acts of mis-using the liberalized facilitation process should be meted out with exemplary punishment and the deterrent side of law for which such provisions are made in law need to be invoked. Considering the facts that the impugned goods were ingeniously concealed by the Respondent and he failed to declare the same, the appellate authority ought not to have allowed redemption of the impugned goods.

5.5. that to buttress their case, reliance is placed on decision of Hon'ble Supreme Court in the case of Samyanthan Murugesan vi's



Commissioner of Customs (AIR), Chennai-I as reported in 2010(254) ELT A15 (SC).

5.6. that the appellate authority had erred in placing reliance on the case of A. Rajkumari Vs CC (Chennai) 2015 (321) ELT 540 (Tri.-Chennai) and in this regard, the appeal filed by the department had been dismissed tby the Hon'ble Apex Court [2015 (321) ELT A 207 (SC)] on grounds of delay and not on merits.

The applicant has prayed that the order passed by the appellate authority was not proper in the eyes of law, as the facts had not been considered and hence the same may be set aside or pass any other order as deemed fit.

6. Personal hearing in the matter was scheduled for 03.09.2019. After the change in the revisionary authority, online personal hearings in the case through the video conferencing mode were scheduled for 03.11.2021 / 10.11.2021, 17.11.202. Shri. S.K Mathur, Advocate appeared online and submitted that the Respondent was a responsible person and is not a habitual offender. He submitted that Commissioner (Appeals) has passed a reasoned order and the same may be maintained.

7. The Government has gone through the facts of the case. The Respondent was intercepted as he was attempting to walk through the green channel after completing immigration formalities. The two gold chains and two gold bars were discovered only when the Applicant was thoroughly checked. These were ingeniously concealed around waist and in shoes. The Respondent had not declared the gold chains and bars as required under section 77 of the Customs Act, 1962. The quantity of gold recovered is quite large, of commercial quantity and it was innovatively and consciously concealed to avoid detection. The confiscation of the gold is therefore justified and thus, the Applicant had rendered himself liable for penal action.

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 observes that the quantum of gold was large, of commercial quantity and it was cleverly and consciously concealed which reveals the intention of the Applicant. It also revealed his criminal bent of mind and a clear intention to evade duty and smuggle the gold into India. The Respondent was a frequent traveler and had a short stay abroad and was ineligible for import of gold. The circumstances of the case especially that it is of commercial quantity and cleverly concealed, probates that the Applicant had no intention of declaring the gold to the Customs at the airport. All these have been properly considered by the Original Adjudicating Authority while absolutely confiscating the two gold chains and two bars.

12. The main issue in the case is the quantum and manner in which the impugned gold was being brought into the Country. 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. In the present case, the manner of concealment being clever and ingenious, quantity being large and commercial, this being a clear attempt to smuggle gold chains and bars, is a fit case for absolute confiscation as a deterrent to such offenders. Thus, taking into account the facts on record and the gravity of offence, the adjudicating authority had rightly ordered the absolute confiscation of gold. But for the intuition and the diligence of the Customs Officer, the gold would have passed undetected. Hon'ble Delhi High Court in the case of Jain Exports Vs Union of India 1987(29) ELT753 has observed that, "*the resort to Section 125 of the C.A. 1962, to impose fine in lieu of confiscation cannot be so exercised as to give a bonanza or profit for an illegal transaction of imports.*". The redemption of the gold will encourage non bonafide and unscrupulous elements to resort to concealment and bring gold. If the gold is not detected by the Custom authorities the passenger gets away with smuggling and if not, he has the option of redeeming the gold. Such acts of mis-using the liberalized facilitation process should be meted out with exemplary punishment and the deterrent side of law for which such provisions are made in law needs to be invoked. Government is



not in agreement with the order of the Appellate Authority allowing the impugned gold chains and bars to be redeemed on payment of a fine. The absolute confiscation of the gold would act as a deterrent against such persons who indulge in such acts with impunity. Therefore, the order passed by the appellate authority is liable to be set aside.

13. The Government finds that the penalty of Rs. 7.5 lakhs imposed under section 112 (a) and (b) is appropriate and commensurate with the omission and commission committed by the Respondent and the appellate authority has upheld the same. The Government does not find it necessary to interfere in the same.

14. In view of the above, the Government sets aside the order passed by the appellate authority and restores the order-in-original passed by the Original Adjudicating Authority. .

15. Revision Application is allowed on above terms.

Shrawan
15/12/21
(SHRAWAN KUMAR)

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

ORDER No. 316 /2021-CUS (WZ) /ASRA/ DATED 15.12.2021

To,

1. Shri. Jignesh Praveen Shah, S/o. Praveen Mangal Shah, 1, Krishnajali Building, 2nd Floor, Near Sarvesh Hall, Tai Pingle Chowk, Dombivali, Pin ; 421 201.
2. Pr. Commissioner of Customs, CSI Airport, Terminal – 2, Mumbai : 400 099.
3. Office of the Principal Commissioner of Customs (Airport), Review Cell, 1st Floor, Avas Corporate Point, Andheri-Kurla Road, Marol, Andheri (E), Mumbai : 400 059.

Copy to:

1. Shri. S.K Mathur & Associates, Advocates, A-103, Kukreja Centre, Sector – 11, CBD Belapur, Navi Mumbai : Pin : 400 614.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File,
4. File Copy.
5. Notice Board.

