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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 371/28/B/2016-RA / 6889 : Date of Issue : 20/11/2022

ORDER NO. 339 /2022-CUS (WZ)/ASRA/MUMBAI DATED 23.11.2022
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.

Applicant : Shri. Narahari Bhargav Sachin

Respondent : Commissioner of Customs, Ahmedabad.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. AHD-
CUSTM-000-APP-346-15-16 dated 04.02.2016 passed by the
Commissioner of Customs (Appeals), Ahmedabad.

ORDER

This revision application has been filed by Shri. Narahari Bhargav Sachin (herein referred to as Applicant) against the Order in Appeal AHD-CUSTOM-000-APP-346-15-16 dated 04.02.2016 passed by the Commissioner of Customs (Appeals), Ahmedabad

2. Briefly stated the facts of the case are that the Applicant, was intercepted on 08.06.2014 and was found with 2 gold bars of 1 kg each, totally weighing 2000 gms valued at Rs. 48,83,600/- (tariff value) of market value Rs. 54,20,000/-. The applicant had arrived at Sardar Vallabhbhai Patel International Airport (SVPIA) from Singapore on board Singapore Airlines Flight No. SQ-530 / 08.06.2014 and had opted for the green channel and had handed over the Customs Declaration Form wherein the value of the dutiable goods in his possession had been declared as nil. To the query put forth by the officers whether he was carrying any dutiable goods, the applicant had replied in the negative. The date of departure of the applicant to Singapore was 07.05.2014. Nothing incriminating was found in the checked-in baggage of the applicant and he was asked to pass through the metal detector where a beep sound was heard. The applicant confessed that he was carrying two gold bars of 1 kg each in the Bermuda shorts and that the same was concealed in mobile covers. The examination of his person resulted in the seizure of the aforesaid quantity of gold i.e. 2000 grams of 999.9 purity, valued at Rs. 48,83,800/- (tariff value) & Rs. 54,20,000/-(LMV) .

3. The Original Adjudicating Authority i.e. Joint Commissioner, Customs, Ahmedabad vide Order-In-Original No. 85/JC-AK/SVPIA/O&A/2015 dated 14.05.2015 ordered for the absolute confiscation of the two gold bars weighing 2000 grams and valued at Rs. 54,20,000/- (LMV) & Rs. 48,83,800/- (T.V). A

penalty of Rs. 8,00,000/- (Rupees Eight lakhs only) under Section 112 (b) of the Customs Act, 1962 was imposed on the applicant alongwith a penalty of Rs. 4,00,000/- (Rupees Four lakhs only) under Section 114AA of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals), Ahmedabad who vide Order-In-Appeal No. AHD-CUSTM-000-APP-346-15-16 dated 04.02.2016 rejected the appeal.

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

5.01. that both authorities had failed to consider that gold was not a prohibited item.

5.02. that invoice could not be produced as he was travelling for business.

5.03. that precedence set in similar cases including the various orders relied upon had not been considered.

5.04. V.P Hameed vs. Collector of Customs, Bombay, 1994-7-ELT-4251, that gold which had not been declared was allowed to be redeemed in view of liberalized policy.

5.05. Kadar Mydin vs. Commr. Of Customs, Preventive, West Bengal, 2011-136-ELT-758, gold which had not been declared was allowed to be redeemed,

5.06. Sapna Sanjeeva Kolhi vs. Commr. Of Customs, Airport, Mumbai, 2008-23-ELT-305, gold had been allowed to be redeemed.

5.07. Vatakkal Moosa vs. Collector of Customs, Cochin, 1994-72-ELT-GOI, passenger was qualified to bring upto 5 kgs of gold. The same was allowed to be redeemed.

5.08. etc.

The applicant has prayed that the absolute confiscation be set aside and the personal penalty imposed be reduced.

6. Online personal hearings in the case were scheduled for 15.09.2021 / 22.09.2021. Shri. Prakash K. Shingrani, Advocate for the applicant vide his letter dated 15.09.2021 requested for adjournment for 1st week of October, 2021 on grounds that he was unwell. Accordingly, personal hearing through online video conferencing mode were scheduled for 05.10.2021 / 12.10.2021. Shri. Prakash K. Shingrani, Advocate vide his letter dated 14.10.2021 informed that due to his illness he was unable to attend and requested that the case be decided on merits and on the written submissions which were reiterated by him. Based on the request of the Advocate, the matter is being taken up for decision.

7. 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 quantity of gold recovered is quite large, of commercial quantity and in the raw form i.e. bars (of 1 kg) 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.

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. Once goods are held to be prohibited, Section 125 of the Customs Act, 1962 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 also observes that the manner in which the gold was concealed i.e. inside mobile phone covers, reveals the intention of the Applicant not to declare the gold bars and to evade duty. The Applicant 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 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 Appellate Authority while confiscating the two gold bars absolutely.

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, clear attempt to smuggle gold 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. 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. The order of the Appellate authority

upholding the order of the adjudicating authority is therefore liable to be upheld and the Revision Application is liable to be dismissed.

13. The Government finds that the penalty of Rs. 8 lakhs imposed under section 112 (b) is appropriate and commensurate with the omission and commission committed by the applicant. However, once penalty has been imposed under section 112(b) of the Customs Act, 1962, Government finds that there is no necessity of imposing penalty under Section 114AA of the Customs Act, 1962. The penalty of Rs. 4 lakhs (Rupees Four Lakh only) imposed under section 114AA of the Customs Act, 1962 is set aside.

14. The Government, keeping in mind the facts of the case is in agreement with the observations of the Appellate authority and finds that absolute confiscation is proper and judicious and also penalty imposed under Section 112(b) of the Customs Act 1962 is proper and judicious. The penalty imposed under Section 114AA of the Customs Act, 1962 is set aside.

15. Revision Application is decided on above terms.


23/11/22
(SHRAWAN KUMAR)

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

ORDER No. ³³⁹ /2022-CUS (WZ) /ASRA/MUMBAI

DATED ²³.11.2022

To,

1. Shri. Narahari Bhargav Sachin, 583, 4th Main, 4th Cross I Block, Ramakrishna Nagar, Mysore City, Karnataka.
2. The Commissioner of Customs, Customs House, Navrangpura, Ahmedabad – 380 009.

Copy to:

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