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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

(i). F.No. 371/485/B/WZ/2022-RA | 371⁵ Date of Issue 19/05/23

ORDER NO. A63/2023 CUS (WZ)/ASRA/MUMBAI DATED 17.05.2023
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.

(i). F.No. 371/485/B/WZ/2022-RA

Applicant : Shri. Hadaifa Mangadan Amoo

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

Subject : Revision Applications filed respectively, under Section 129DD
of the Customs Act, 1962 against the Order-in-Appeal No. MUM-
CUSTM-PAX-APP-586/2022-23 dated 06.07.2022 issued
through F.No. S/49-2346/2021 passed by the
Commissioner of Customs (Appeals), Mumbai – III.

ORDER

This revision application has been filed by Shri. Hadaifa Mangadan Amoo (hereinafter referred to as the Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-586/2022-23 dated 06.07.2022 issued through F.No. S/49-2346/2021 passed by the Commissioner of Customs (Appeals), Mumbai – III.

2(a). Brief facts of the case are that the applicant on arrival at CSMI Airport, Mumbai from Dubai on 30.03.2019 by Air India Flight No. AI-984 was intercepted by the Customs Officers at CSMI Airport, Mumbai. The applicant had cleared himself through the green channel without declaring any dutiable goods and was proceeding towards the exit gate. It was observed that on the upper-side rod of the bottom of the trolley used by the applicant for his baggage, two half round shaped metal pipes coated with chrome were found affixed with the adhesive tapes. These rods appeared to be made of gold and the same were recovered. The applicant stated that he had concealed these two rods and the same were assayed. The Government Approved Valuer certified that these two half round rods coated with chrome were made of gold of 999% purity (24Kts), weighed 499 grams and valued at Rs. 14,56,581/-.

2(b). The applicant in his statement recorded under Section 108 of the Customs Act, 1962 stated that he was a frequent visitor to Dubai. He was the owner of the gold and had taken a loan from a friend. He further stated that he had never carried or smuggled gold during any of his earlier visits; that he was aware that carrying of smuggled gold by concealing and without payment of duty was an offence; that he had concealed the gold to avoid detection and evade payment of Customs duty. He admitted knowledge, possession, ownership, carriage, non-declaration of the seized gold.

3. After due process of the law, the Original Adjudicating Authority, viz Addl. Commissioner of Customs, CSMI Airport, Mumbai vide Order-in-Original No. ADC/VD/ADJN/25/2021-22 dated 25.05.2021 issued on 27.05.2021 from F.No. S/14-5-217/2019-20-ADJN (SD/INT/AIU/150/2019-AP'D)] ordered for the absolute confiscation of the seized gold i.e. two half round shaped crude gold pieces coated with chrome colour, collectively weighing 499 grams of 24Kts purity and valued at Rs. 14,56,581/- under Section 111(d), 111(l) & 111(m) of the Customs Act, 1962 and a penalty of Rs. 1,40,000/- was also imposed on the applicant under Section of 112 (a)(i) of Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed an appeal before the appellate authority (AA) viz, Commissioner of Customs (Appeals), Mumbai – III who vide Order-In-Appeal No. MUM-CUSTOM-PAX-APP-586/2022-23 dated 06.07.2022 issued through F.No. S/49-2346/2021 did not find it necessary to interfere with the OIO passed by the OAA and upheld the same.

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

5.01. that the impugned OIA was against the nature of law, was a cryptic order and relevant facts have not been considered; that he had declared the goods to the officers; that he had not crossed the Customs barrier; that gold was brought for personal use; that the gold ought not to have been confiscated absolutely as it was not a prohibited items as per EXIM policy; that absolute confiscation was harsh; that Section 125 of the Customs Act, 1962 was attracted; that the gold ought to have been redeemed against payment of fine; that the Customs should have guided the applicant; that the government had liberalized the import policy of gold; that penalty under Section 112(a) of the Customs Act, 1962 ought not to have been imposed as there was no mensrea; that he was the owner of the goods; that he had claimed ownership of the goods before OAA itself; that all the facts had not been considered by the lower authorities while passing the Order; that non-declaration was a technical offence; that they have relied on the following judgement;

- (a). Commissioner of Customs, Kandla v/s Deluxe Exports [2001 (137) ELT 1336 (Tri-Mumbai)]
- (b). Commissioner of Customs (PREV), West Bengal v/s Kader Mydeen (2001 (136) ELT. 758 (Tri-KOLKATA))
- (c). Union of India v/s Dhanak M. Ramji (2010 (252) ELT A102 (SC))
- (d) SHAIKH JAMAL BASHA v/s GOVERNMENT OF INDIA 1997 (91) ELT. 277 (AP).

Under the circumstance, the applicant has prayed to the Revision Authority to set aside the Orders passed by the lower authorities and allow clearance of the impugned goods on payment of duty, fine and penalty or to grant any other relief as deemed fit.

6. The records with the Revision Authority indicates that there is another Revision Application bearing F.No. 371/273/B/2021 pending against said applicant. Accordingly, personal hearing in both the cases were scheduled for 06.12.2022, 20.12.2022. An Advocate appeared on behalf of the applicant for RA no. 371/273/B/2021. However, none appeared for this case. Therefore, another personal hearing was fixed for 20.04.2023. Sufficient opportunity has been accorded to the applicant. They have not availed of the same. Case is taken up for ex-parte decision on the basis of evidence available on records.

7. The Government has gone through the facts of the case and notes that the applicant had passed through the green channel and was proceeding towards the exit gate of arrival hall at CSMI Airport, Mumbai without declaring the gold and had attempted to evade payment of Customs duty. He had adopted an ingenious method of concealment and had converted the gold and given a shape of a half round pipe which he had coated with chrome and stuck it at the bottom of the trolley on which he had kept his baggage. The impugned gold had been ingeniously converted and the gold was of very high purity of commercial grade. The applicant clearly had failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. The

applicant admittedly was a frequent traveller and was aware of the law and procedure. The nature of concealment especially the ingenuity used reveals the mindset of the applicant to not only evade duty but smuggle the gold. It also reveals that the act committed by the applicant was conscious and pre-meditated. The applicant was given an opportunity to declare the dutiable goods in his possession but having confidence in the nature of his concealment, he denied carrying any gold. Had he not been intercepted, the applicant would have gotten away with the gold which he had concealed at the bottom of the trolley.

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 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. From the records, Government notes that earlier the said applicant was involved in smuggling of foreign currency and was apprehended at CSMI Airport. Foreign currency equivalent to Rs. 19,08,849/- had been recovered from the

applicant. Revision Application no. 371/273/B/2021 has been filed by the applicant. The Government notes that applicant had exhibited contumacious behaviour towards the law and has shown a disdain toward the laws of the land.

12. Government observes impugned gold was cleverly, consciously and ingeniously 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 aforesaid purity, ingenious concealment, probates that the applicant had no intention of declaring the gold to the Customs at the airport. The applicant is a habitual offender and was involved in smuggling foreign currency in the past. All these when considered, Government observes that the lower authorities have been right in ordering the absolute confiscation of the gold.

13. 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, conscious and ingenious, purity of gold being for commercial use, this being a clear attempt to brazenly smuggle the impugned gold, involvement in the past, thus this is a fit case for absolute confiscation as a deterrent to such offenders. Government is in agreement with the order of the AA absolutely confiscating the impugned gold. The absolute confiscation of the gold would act as a deterrent against such persons who indulge in such acts with impunity. Considering the aforesaid facts, Government is inclined not to interfere in the order of absolute confiscation passed by the AA.

14. Government finds that the penalty of Rs. 1,40,000/- imposed on the applicant by the OAA under Section 112(a)(i) of the Customs Act, 1962 and upheld by the AA is commensurate with the omissions and commissions committed and is not inclined to interfere in the same.

15. For the aforesaid reasons, the Government finds that the OIA passed by the AA is legal and proper and does not find it necessary to interfere in the same. The Revision Application filed by the applicant, fails. .

16. Accordingly, for the reasons stated above, the Revision Application filed by the applicant is dismissed.


(SHRAWAN KUMAR)

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

ORDER No. 463/2023-CUS (WZ)/ASRA/MUMBAI DATED 05.05.2023.

To,

1. Mr. Hudaifa Mangadan Amoo, **address no. 1** : Mangadan House, Thekkil, Post :- Thekkil Ferry, Kasargod, Kerala – 671 541; **address no. 2** : 1/146-A, Mangadan House, Thekkil, Post :- Thekkil Ferry, Kasargod, Kerala – 671 541.
2. Pr. Commissioner of Customs, CSMI Airport, Level – II, Terminal – II, Sahar, Andheri (East), Mumbai – 400 099.

Copy to:

3. Sr. P.S. to AS (RA), Mumbai.
4. File Copy.
5. Noticeboard.