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SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No. 371/187/B/WZ/2020-RA / 4240 : Date of Issue : 23.06.2023

ORDER NO. 284 /2023-CUS (WZ)/ASRA/MUMBAI DATED 22.06.2023
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. 371/187/B/WZ/2020-RA

Applicant : Shri. Satvinder Singh

Respondent : Pr. Commissioner of Customs, Custom House, Near
Akashwani, Navrangpura, Ahmedabad 380 009.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. AHD-
CUSTM-000-APP-704-19-20 dated 09.03.2020 issued
through F.No. S/49-323/CUS/AHD/2019-20 passed by the
Commissioner of Customs (Appeals), Ahmedabad.

ORDER

This revision application has been filed by Shri. Satvinder Singh (hereinafter referred to as the Applicant) against the Order-in-Appeal No. AHD-CUSTOM-000-APP-704-19-20 dated 09.03.2020 issued through F.No. S/49-323/CUS/AHD/2019-20 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. Brief facts of the case are that the applicant was intercepted by Customs Officers when he was about to exit through the green channel at SVP International Airport, Ahmedabad. The applicant had been intercepted at the exit gate having crossed the green channel. The applicant was asked to pass through the door frame metal detector (DFMD). Prior to passing through the DFMD, the applicant removed all the metallic objects he was wearing on his body which included his wallet, belt, mobile phone, ring, one gold kada and one gold kadiwali chain. Thereafter, the applicant was made to pass through the DFMD. However, no beep sound was heard. The applicant on being asked about the gold kada and gold kadiwali chain, replied that the same were given to him by one person at Pataya (Bangkok). The gold kada and gold kadiwali chain were assayed and the Government Approved Valuer certified that the gold kada was coated with white rhodium and weighed 376.41 grams and the gold kadiwali chain weighed 69.250 grams, and were of 24 karats purity. The total weight of the gold kada and gold kadiwali chain was 445.660 grams, having tariff value of Rs. 12,19,928/- and market value of Rs. 13,92,687/-.

3. The Original Adjudicating Authority (OAA), viz, Addl. Commissioner, Customs, Ahmedabad vide Order-In-Original No. 22/ADC-

MLM/SVPIA/O&A/2019-20 DATED 25.07.2019 issued on same day through F.No. VIII/10-107/SVPIA/O&A/2018 ordered for the absolute confiscation of the gold kada and gold kadiwali chain having purity of 999.0, totally weighing 445.660 grams, valued at Rs. 12,19,928/- (T.V) and Rs. 13,92,687/- (M.V) under Sections 111(d), 111(i), 111(l) & 111(m) of the Customs Act, 1962 and a penalty of Rs. 1,40,000/-- under Section 112 (a) & (b) of the Customs Act, 1962 was imposed on the applicant.

4. Aggrieved by the said order, the applicant preferred an appeal before the appellate authority (AA) viz, Commissioner of Customs (Appeals), Ahmedabad, vide Order-In-Appeal No. AHD-CUSTOM-000-APP-704-19-20 dated 09.03.2020 issued through F.No. S/49-323/CUS/AHD/2019-20 did not find any reason to interfere in the Order-in-Original passed by the OAA and upheld the same.

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

5.01. that the orders of the lower authorities were passed without understanding the facts of the case and applying the law and was liable to be set aside.

5.02. that the reliance placed by the AA on the case of Khemani Purshottam Mohandas vs. CC, CSI Airport, Mumbai [2017(354) ELT 275 (T)] was misplaced as in this case the quantum of gold was high i.e. 6 kgs.

5.03. that the gold was not concealed and had been worn by the applicant; that the gold kada and gold kadiwali chain had been purchased by the applicant with his own money and some borrowed from his friends who lived abroad; that the applicant did not have any malafide intentions; that mens rea was absent and penalty cannot be imposed; that redemption of gold can be granted in terms of Section 125 of the Customs Act, 1962;

5.04. that they rely on the undermentioned case laws;that the lower

- (a). Yakub Ibrahim Yusuf Vs CC, Mumbai 2011 (263) ELT 685 (Tri - Mumbai),
- (b). Nine Star Exports Vs. Commissioner of Customs (Ports), Chennai 2003(151) ELT 265 (Mad);
- (c). T.Elavarasan vs The Commissioner of Customs (Airport), Chennai; 2011-266-ELT-167-Mad.
- (d). Sapna Sanjeev Kohli vs Commissioner of Customs, Mumbai; 2009(240) ELT 207(Bom).

Under the above facts and circumstances of the case, the Applicant has prayed that the Revision Authority be pleased to set aside the impugned OIO and OIA and allow to redeem / re-export the gold in terms of Section 125 of Customs Act, 1962 by setting aside the confiscation and imposing reasonable redemption fine and penalty.

6. The applicant has filed an application for condonation of delay attributing the delay to lockdown imposed at Mumbai due to COVID during the relevant period.

7. Personal hearing of the case was scheduled for 11.05.2023 and 18.05.2023. Shri. D. S. Chaddha, Advocate appeared for online personal hearing on 18.05.2023 and submitted that applicant brought small quantity of gold jewellery for personal use, jewellery was worn, and the applicant is not a habitual offender. He further submitted that there was no ingenious concealment. He submitted copy of bill. He also submitted copy of High Court Order of Rajasthan High Court dated 17.02.2022 in Civil Writ Petition 12001 / 2020. He requested to allow option to redeem goods on reasonable fine and penalty.

8. On the issue of condonation of delay, Government notes that the OIA was issued on 09.03.2020 and just after a few days later, lockdown due to COVID had been imposed. The revision application has been filed on

13.08.2020 and during this time, the moratorium allowed by the Hon'ble Supreme Court was in effect. Government does not find that there had been any delay on the part of the applicant in filing the revision application.

9. During the personal hearing, the Advocate for the applicant had placed reliance on the judgement passed by a Division Bench, of Hon'ble Rajasthan High Court in Manoj Kumar Sharma vs. UOI and others in Civil Writ Petition No. 12001/2020 against the revisional order dated 30.12.2019, GOI, Delhi Bench. Government notes that against this order, a SLP(C) bearing diary no. 13435 of 2023 has been filed in the Hon'ble Supreme Court of India, which is pending.

10. The Government has gone through the facts of the case and notes that the applicant had failed to declare the goods in his possession as required under Section 77 of the Customs Act, 1962. The applicant had not disclosed that he was carrying gold and had he not been intercepted would have walked away with the impugned jewellery i.e. gold kadawali chain and gold kada without declaring the same to Customs. By his actions, it was clear that the applicant had no intention to declare the impugned gold jewellery to Customs and pay Customs duty on it. The Government finds that the confiscation of the gold kadawali chain and gold kada were therefore, justified.

11. 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”.

12. 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.

13. 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 the 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.

14. The quantity of gold jewellery i.e gold kadawali chain and gold kada under import is small and is not of commercial quantity. The gold jewellery was found in the pant pockets of the applicant and had not been ingeniously concealed. There are no allegations that the applicant is a habitual offender and was involved in similar offence earlier. The facts of the case indicate that it is a case of non-declaration of gold, rather than a case of smuggling for commercial considerations. Under the circumstances, the seriousness of the misdemeanour is required to be kept in mind when using discretion under Section 125 of the Customs Act, 1962 and while imposing quantum of penalty.

15. The absolute confiscation of the gold, leading to dispossession of the applicant of the gold jewellery i.e. gold kadawali chain and gold kada, in the instant case is therefore, harsh and not reasonable. Government therefore,

sets aside the impugned order of the appellate authority. The impugned gold jewellery i.e. gold kadawali chain and kada, totally weighing 445.660 grams, valued at Rs. 12,19,928/-(T.V) and Rs. 13,92,687/- (M.V) are allowed redemption on payment of fine of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand Only). The Government finds that the penalty of Rs. 1,40,000/- imposed on the applicant under Section 112(a) & (b) of the Customs Act, 1962 is commensurate with the omission and commission committed and the same is sustained.

16. Revision Application is disposed of on the above terms.


(SHRAWAN KUMAR)

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

ORDER NO. 484/2023-CUS (WZ)/ASRA/MUMBAI DATED 22.06.2023.

To,

1. Shri. Satvinder Singh, 1/6171-A, Second Floor, Gali No. 2, East Rohtas Nagar, Delhi – 110 032.
2. Pr. Commissioner of Customs, Custom House, Near Akashwani, Navrangpura, Ahmedabad 380 009.

Copy to:

1. Shri. D.S Chadha, G-16, IInd Floor, Lajpat Nagar – 1, New Delhi – 110 024.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.