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SPEED POST



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

F.No. 373/48/B/2017-RA (Mum) / 1617

Date of Issue 03.03.2021

ORDER NO. 50/2019-CUS (WZ)/ASRA/MUMBAI DATED 26.02.2021 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 Prem Nanikram Wadhawani

Respondent : Commissioner of Customs, (Airport), Bangalore

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal 32/2017 dated 13.02.2017 passed by the Commissioner of Customs (Appeals), Bangalore.

ORDER

This revision application has been filed by Shri Prem Nanikram Wadhawani (herein referred to as Applicant) against the order No. 32/2017 dated 13.02.2017 passed by the Commissioner of Customs (Appeals), Bangalore.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Prem Nanikram Wadhawani on 28.09.2015 when he was exiting through the green channel. A body scan with the Metal detector indicated metal content near the buttock area. On enquiry he admitted that he had concealed gold in his rectum. Accordingly, the officers recovered two cut gold pieces totally weighing 351.330 grams valued at Rs. 9,48,590/- ( Rupees Nine lakhs Forty eight thousand Five hundred and Ninety ).

3. After due process of the law vide Order-In-Original No. 33/2016-17 dated 27.05.2016 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (i) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 2,80,000/- (Rupees Two lakhs eighty thousand) under Section 112 (a) and (b) of the Customs Act, 1962 and also imposed penalty of Rs. 1,90,000/- (Rupees One lakh ninety thousand) under Section 114 AA of the Customs Act, 1962.

4. Aggrieved by this order the applicant filed an appeal with the Commissioner of Customs (Appeals), Commissioner (Appeals) vide his order No. 32/2017 dated 13.02.2017 passed by the Commissioner of Customs (Appeals), Bangalore rejected the appeal of the Applicant.

5. Aggrieved with the above order the Applicant has filed this revision application inter alia on the grounds that;

5.1 Gold is not a prohibited item and option under 125 of the Customs Act, 1962 ought to have been given.

5.2 The Applicant craves to refer and rely upon similar orders where concealment is established and option of redemption was given.

5.3 The Applicant prayed for (a) Absolute confiscation to be set aside.

(b) Personal penalty be reduced.

(c) Personal penalty under section 114AA be set aside and  
Any other reliefs, this Hon'ble Court may deem fit and proper.

6. A personal hearing in the case was scheduled in the case on 07.11.2019, 21.11.2019, 10.12.2020, 17.12.2020 and 24.12.2020. However neither the Applicant nor the department attended the said hearing. Due to change in the Revisionary authority a personal hearing was again scheduled on 05.02.2021. Shri Prakash Shringrani and Shri G. Babu both advocates attended the said hearing and reiterated the written submissions on the matter. They requested release of the gold on appropriate redemption fine and penalty.

7. The Government has gone through the facts of the case, the Applicant was intercepted at the exit, after he cleared himself at the green channel. A body scan with a Metal detector detected metal concealment near the buttock area. On personal examination the officers recovered two gold bits totally weighing 351.330 grams from his rectum.

8. It is a matter on record that the impugned gold was recovered from the Applicants rectum. It is thus clear that the concealment was purposeful in order to avoid detection by the Customs authorities. The manner of concealment also indicates mensrea, and if he was not intercepted the Applicant would have succeeded in smuggling the gold into India.

9. The Applicant has contended that gold is not a prohibited item. In addressing this contention, Government observes, 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 Hon'ble Apex Court in the case of Sheikh Mohd. Omer V/s Collector of Customs, Calcutta and others, reported in 1970 (2) SCC 728 has laid down that the expression 'prohibition' used in section 111 (d) must be considered as a total prohibition. The Hon'ble Court ruled that "..... *any goods which are imported or attempted to be imported contrary to "any prohibition imposed by any law for the time being in force in this country" is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any*

*restriction on import or export is to an extent a prohibition. The expression "any prohibition" in Section 111(d) of the Customs Act, 1962 includes restrictions."* 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". 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. The Applicant was well aware that gold is not only a dutiable item and needs to suffer customs duty for its import into India, but gold is also subjected to certain restriction with conditions and eligible agencies / persons can only bring the same into India. The ingenious concealment in the rectum clearly indicated that he was planning to escape the payment of customs duty and smuggle the gold into India. The impugned gold was discovered only after the Applicant was intercepted and subjected to a body scan with a metal detector.

11. The Applicant has pleaded for redemption of the gold. The Original adjudicating authority, has denied the same as he did not consider it a fit case for exercise of his discretion to allow redemption under Section 125 of the Act. The Appellate authority has upheld the order and confirmed absolute confiscation of the gold. The Hon'ble Madras High Court in the case of *Commr. of Customs (Air), Chennai-I V/s P. Sinnasamy, 2016 (344) E.L.T. 1154* (Mad.) referred supra has held that the adjudicating authority is within his discretion to confiscate the goods absolutely and that redemption cannot be allowed as a matter of right. Given the circumstances of the case, Government also does not find any reason to take a different view. Government however observes that once penalty has been imposed under section 112(a) and (b) there is no necessity of imposing penalty under section 114AA, the penalty of Rs. 1,90,000/- ( Rupees

One lakh Ninety thousand) imposed under section 114AA of the Customs Act,1962 is set aside.

12. The impugned Order is modified as detailed above. Revision Application is partly allowed.

*Shrawan*  
*26/2/21*

( SHRAWAN KUMAR )  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No 50 /2021-CUS (WZ) /ASRA/

DATED 26-02-2021

To,  
Shri Prem Nanikram Wadhawani, C/o Shri P. K. Shingrani- Advocate, 12/334,  
New MIG Colony, Bandra (E) , Mumbai - 51.

Copy to:

1. The Commissioner of Customs, Kempegowda International Airport, Bangalore.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.