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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. 371/214/B/WZ/2021-RA

Date of Issue : 25.07.23

ORDER NO. 534 /2023-CUS (WZ)/ASRA/MUMBAI DATED 19.07.2023
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. 371/214/B/WZ/2024-RA

Applicant : Sujit Rajan.

Respondent : Principal Commissioner of Customs, CSMI Airport,
Sahar, Andheri East, Mumbai - 400 099.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-1782/2020-21 dated
25.02.2021 issued on 08.03.2021 through F.No. S/49-
1314/2019 passed by the Commissioner of Customs
(Appeals), Mumbai - III, Marol, Mumbai - 400 059.

ORDER

This revision application has been filed by Sujit Rajan (hereinafter referred to as the Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1782/2020-21 dated 25.02.2021 issued on 08.03.2021 through F.No. S/49-1314/2019 passed by the Commissioner of Customs (Appeals), Mumbai – III, Marol, Mumbai – 400 059.

2. Brief facts of the case are that on 07.11.2019, Customs Officers at the CSMI Airport, Mumbai had intercepted the applicant, who had arrived from Dubai onboard Vistara Airlines Flight No. UK-202 and had cleared himself through the green channel. The search of the applicant led to the recovery of one crude gold kada, weighing 113 gms and valued at Rs. 3,90,528/-.

3. The Original Adjudicating Authority (OAA), viz, Dy. Commissioner of Customs, CSMI Airport, Mumbai who vide his Order-In-Original no. AirCus/49/T2/1303/2019-D dated 07.11.2019 ordered for the confiscation of the one crude gold kada, weighing 113 grams and valued at Rs. 3,90,528/- Section 111(d), (l) & (m) of the Customs Act, 1962. However, an option to redeem the gold kada was allowed on payment of a fine of Rs. 20,000/- under Section 125(1) of the Customs Act, 1962. Further, a personal penalty of Rs. 20,000/- was imposed on the applicant under Section 112(a) and (b) of the Customs Act, 1962.

4. Aggrieved by the said order, the respondent preferred an appeal before the appellate authority (AA) viz, Commissioner of Customs (Appeals), Mumbai – III who vide Order-In-Appeal No. MUM-CUSTOM-PAX-APP-1782/2020-21 dated 25.02.2021 issued on 08.03.2021 through F.No. S/49-1314/2019 set aside the impugned OIO dated 07.11.2019 passed by the OAA and ordered

for the absolute confiscation of the one crude gold kada. Penalty of Rs. 20,000/- imposed on the applicant by the OAA under Section 112(a) and (b) of the Customs Act, 1962 was upheld.

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

5.01. the AA had failed to appreciate that the gold kada belonged to the applicant; that he had purchased same from Dubai; that he was wearing the gold kada; that the kada was his regular wear; that tax invoice for the purchase of the kada was furnished; that he was holding foreign currency at the time or would have arranged for the same; that he had sound financial standing; that he had returned to India after 8 months stay at Dubai; that thus, he was a bonafide passenger; that he was a businessman and not acting as a carrier; that the AA had passed the order on the basis of surmises and presumptions without ascertaining the true facts; that the gold kada was on his person and it cannot be considered as concealment; that the gold is not in commercial quantity; that the AA has passed order which is contrary to his earlier orders where gold had been released on payment of redemption fine; that the order passed by the AA is illegal and bad in law.

The applicant has prayed to the revisionary authority to quash and set aside the order passed by both the Appellate Authority and the OIO passed by the OAA be accepted and restored; that gold be released on payment of duty without any RF and penalty or to grant any other reliefs as deemed fit.

6. The applicant has filed an application for condonation of delay of 15 days. This delay has been attributed by the applicant was due to Covid condition.

12. 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.

13(a). The Government notes that the quantity of gold was small; that the applicant was wearing the same. The applicant has claimed that he was returning back to India after a stay abroad of 8 months. Government notes that in the detention-cum-seizure memo available in the records presented, it is seen that the respondent has mentioned that the applicant was returning back after 6 months having departed on 06.04.2019. There are no allegations that the Applicant is a habitual offender and was involved in similar offences earlier. On the issue of ownership, Government notes that

there are a catena of judgements of the High Courts, CESTAT etc where the same has been allowed to be released to the person from whom the same was recovered and this contention that the gold kada did not belong to the applicant is of no relevance and holds no bar. No evidence was produced to substantiate claim of being eligible person.

13(b). 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 misdemeanor is required to be kept in mind when using discretion under Section 125 of Customs Act, 1962 and while imposing quantum of penalty. Government notes that the applicant has prayed that the OIO passed by the OAA be restored.

14. In view of the foregoing paras, the Government finds that as the applicant had not declared the assorted gold jewellery at the time of arrival, the confiscation of the same was justified. However, considering the quantity of gold, no past history, the same having been worn as claimed by him and not being concealed in an ingenious manner, the absolute confiscation of the same was harsh and not justified. In view of the aforesaid facts, the option to redeem the gold kada on payment of a redemption fine ordered by the OAA was legal and judicious and should have been upheld by the AA. Government is inclined to allowing the redemption of crude gold kada on payment of appropriate redemption fine. The redemption fine of Rs. 20,000/- by the original authority needs a modification. The gold jewellery is allowed to be redeemed on Redemption Fine of Rs. 75,000/- (Rupees Seventy Five Thousand only).

15. Government finds that the penalty of Rs. 20,000/- imposed on the applicant under Section 112 of the Customs Act, 1962 is commensurate with the omissions and commissions committed and is not inclined to interfere in the same.

16. In view of the above, the Government sets aside the OIA passed by the AA and allows the applicant to redeem the impugned gold kada, weighing 113 grams, and valued at Rs. 3,90,000/- on payment of a redemption fine of Rs. 75,000/- (Rupees Seventy Five Thousand only. The penalty of Rs. 20,000/- imposed on applicant under Section 112 of the Customs Act, 1962 by the OAA and upheld by the AA is sustained.

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


(SHRAWAN KUMAR)

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

ORDER NO. 534 /2023-CUS (WZ)/ASRA/MUMBAI DATED/9 .07.2023.

To,

1. Shri. Sujit Rajan, Kozhikode, Kerala (incomplete address ; Service through noticeboard and Advocate on record).
2. Pr. Commissioner of Customs, Adjudication Cell, Chhatrapati Shivaji Maharaj International Airport, Sahar, Andheri East, Mumbai - 400 099.

Copy to:

3. Smt. Shivangi Kherajani, Advocates, 501, Savitri Navbahar CHS, 19th Road, Khar West, Mumbai - 400 052.
4. Sr. P.S. to AS (RA), Mumbai.
5. File Copy.
6. Notice Board.