



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

F.No. 373/240/B/15-RA / 1889

Date of Issue 12.03.2021

ORDER NO.56/2021-CUS (SZ)/ASRA/MUMBAI DATED 05.03.2021 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 Sanoob T. Y.

Respondent : Commissioner of Customs, Cochin

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. COC-CUS-000-APP-503-14-15 dated 23.04.2015 passed by the Commissioner of Customs (Appeals), Cochin.

ORDER

This revision application has been filed by the Shri Sanoob T. Y. (herein referred to as Applicant) against the order COC-CUS-000-APP-503-14-15 dated 23.04.2015 passed by the Commissioner of Customs (Appeals), Cochin.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Sanoob T. Y. at the Cochin International Airport, on 26.01.2015 as he tried walking out through the exit gate. Examination of his baggage/person resulted in the recovery of a gold chain links totally weighing 116 grams valued at Rs. 2,91,294/- (Rupees Two lakhs Ninety one thousand Two hundred and Ninety four).

3. After due process of the law vide Order-In-Original No. 25/2015 dated 26.01.2015 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, and imposed penalty of Rs. 5000/- (Rupees five thousand) under Section 112 (a) and (b) of the Customs Act, 1962.

4. Aggrieved by this order the Applicant filed appeals with the Commissioner of Customs (Appeals), The Commissioner (Appeals) vide its order COC-CUS-000-APP-503-14-15 dated 23.04.2015 rejected the Appeal and upheld the order of the Original Adjudicating Authority.

5. Aggrieved with the above order the Applicant has filed this revision application for the following reasons;

5.1 The orders are not legal or proper. That the adjudicating authority and Appellate authority failed to appreciate that the applicant has not imported any items for trade or business. Items brought by the applicant are for his bona fide use. Hence it is not liable for confiscation.

5.2 The adjudicating authority and the appellate authority failed to appreciate that applicant has not concealed any dutiable or prohibited items which attract the provisions of Sec 111(i) of Customs Act rather the applicant voluntarily disclosed the gold.

5.3 The adjudicating authority and the appellate authority failed to appreciate that when applicant expressed his intention to pay customs duty as applicable, it was the responsibility of the respondent to extend an option for paying customs duty or allowing re-export of the same without fine and penalty.

5.4 The adjudicating authority and the appellate authority has failed to appreciate that this was not a case calling for confiscation and penalty in as much as the goods were not concealed nor mis declared and the goods are for the bonafide use of the Passenger himself.

5.5 The adjudicating authority and the appellate authority failed to appreciate that even if it is assumed that the gold imported by the applicant is liable for confiscation, it is not a prohibited goods to order for imposing exorbitant amount of fine and penalty.

5.6 The adjudicating authority and the appellate authority failed to appreciate that at the time of disembarkation the applicant disclosed to the officer that he is having some gold ornaments with him and alleging mis declaration of such ornaments is unsustainable.

5.7 The adjudicating authority and the appellate authority failed to appreciate that it is a bonafide duty of the proper officers to enlighten the effected persons about alternative remedies available to him, in light of natural justice, when he unknowingly violated the provisions of law. In the present case, the officer-in-charge did not extend any opportunity to the applicant to know about the applicable remedies to him and the impugned order is against natural justice.

5.8 That the Applicant has not imported any prohibited goods for imposing heavy amount as penalty. But the adjudicating authority and Appellate authority have failed to distinguish the difference and imposed heavy amount as fine and as penalty.

5.9 That the adjudicating authority failed to appreciate the fact that the Applicant has imported the goods for his bonafide personal use In those cases where the imported items are for the actual use of the importer and where the import is not for profit motive, penalty cannot be imposed. (1998 (102) ELT 746 Tribunal).

5.10 The adjudicating authority has failed to appreciate that In the matter of Mohd. Zia Ul Hague Vs Government of India, Ministry of Finance (reported in 2014 (314) E.L.T. 849 (G.O.1.1 Revision authority categorically

held that when the goods are not prohibited, the adjudicating officer shall give option to pay redemption fine in lieu of confiscation, as the officer thinks fit, which discretion has to be exercised judiciously. Thus even if it is assumed that the gold imported by the appellant is liable for confiscation, it is not a prohibited goods to order for absolute confiscation.

5.11 In view of the above the Applicant submitted that the impugned orders are liable to be quashed. And the gold be released without fine and penalty. Or any other order as deemed fit and proper considering the facts and circumstances of the case.

6. In view of the above, personal hearing in the case was held on 02.03.2021. Shri Augustine, P. A. attended the said hearing on behalf of the Applicant and reiterated the submissions made. He submitted that gold should be released on redemption fine and penalty. Nobody attended the hearing on behalf of the Respondent.

7. The Government has gone through the case records. It is observed that the Applicant did not declare the gold jewelry as required under section 77 of the Customs, Act, 1962 and was intercepted at the exit. Therefore the confiscation of the gold jewelry is justified. Once the gold jewelry is held liable for confiscation, the misdemeanor/ transgression of the passenger is held as confirmed and therefore imposition of personal penalty on the passenger becomes necessary.

8. Government however notes that there is no allegation that the jewelry was ingeniously concealed. The quantity of gold chain links under import is small. There are no allegations that the Applicant is a habitual offender and was involved in similar offences earlier. The quantity of jewelry clearly brings out that it is a case of bringing gold jewelry above permissible limits rather than a case of smuggling for commercial considerations. Under the circumstances, the absolute confiscation of the small quantity of gold jewelry is unreasonable. The seriousness of the misdemeanor is required to be weighed before invoking penal provisions for a proper and justified deterrence. The absolute confiscation of the 116 gms gold chain links is therefore an order in over reach.

9. There are a number of judgments wherein the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 requires

it to be exercised. The Hon'ble High Court of Andhra Pradesh in the case of Sheikh Jamal Basha vs GOI 1997 (91) ELT 277 (AP) has stated that under section 125 of the Act is Mandatory duty to give option to the person found guilty to pay fine in lieu of confiscation; The Hon'ble Supreme Court in the case of Union of India V/s Dhanak M. Ramji 2010 (252) ELT A102 (S.C.) has upheld the order of the Bombay High Court releasing confiscated gold on payment of redemption fine and penalty. The order of absolute confiscation upheld by the Appellate authority is therefore unreasonable and is required to be set aside.

10. The Applicant has prayed for redemption of the jewellery and the Government is inclined to accept his plea. The impugned gold jewellery totally weighing 116 grams valued at Rs. 2,91,294/- (Rupees Two lakhs Ninety one thousand Two hundred and Ninety four) is allowed to be redeemed on redemption fine of Rs.60,000/-(Rupees Sixty thousand), the penalty imposed is appropriate.

11. Revision application is disposed of accordingly.

Shrawan Kumar
05/03/21
(SHRAWAN KUMAR)

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

ORDER No. 56 /2021-CUS (SZ) /ASRA/

DATED 05.03.2021

To,

1. Shri Shri Sanoob T. Y. , S/o Yoosuf, R/o Thekkeveetil, Kizhakkeveli Paramb, Vaduthala Jetty P.O., Chethala, Alappuzha.
2. The Commissioner of Customs, Cochin International Airport, Cochin.

Copy to:

3. Shri P.A. Augustian, Advocate, Faizel Chambers, Pullepady Cross Road, Cochin - 682 018.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.