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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. 373/193/B/2020-RA / 136

Date of Issue 14.02.22

ORDER NO. 57 /2022-CUS (SZ)/ASRA/MUMBAI DATED 10.02.2022
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. Mohammed Ibrahim

Respondent: Pr. Commissioner of Customs, Tiruchirapalli _ I, Pin : 620
007.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
TCP-CUS-000-APP-029-20 dated 24.04.2020 [DOI :
11.05.2020] [A.No. C24 /56 / 2019-TRY(CUS)] passed by
the Commissioner of GST, Service Tax & Central Excise
(Appeals), Trichirappalli - 620 001.

ORDER

This revision application has been filed by Shri. Mohammed Ibrahim (herein referred to as Applicant) against the Order-In-Appeal No. TCP-CUS-000-APP-029-20 dated 24.04.2020 [DOI : 11.05.2020] [A.No. C24 /56 / 2019-TRY(CUS)] passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Trichirappalli – 620 001.

2. The brief facts of the case are that the applicant who had arrived on. 04.07.2018 at Trichy Customs Airport by Malindo Air Flight No. OD 223 from Kuala Lumpur, based on suspicion was intercepted by Customs Officers while he was attempting to exit through the green channel. It was ascertained that the applicant had not filed a Customs Declaration Form which is for passengers to declare possession of any dutiable goods like gold etc. Upon enquiry by the Customs Officer about possession of any dutiable items like gold in any form etc either in baggage or on his person, the applicant had replied in the negative. The passenger was requested to pass through a door frame metal detector, which indicated presence of some kind of metal on his person; he was searched which led to the recovery of 3 rectangular shaped gold cut pieces of foreign markings of 24 carat purity, totally weighing .112.100 grams, valued at Rs. 3,43,362/-which had been concealed in his pant ticket pocket. The applicant did not have any valid permit / license / document for the legal import of the said gold chain nor any foreign currency to pay the Customs duty..

3. After due process of law, the adjudicating authority viz, Asst. Commissioner of Customs, Trichy Airport, vide Order-In-Original No. Order-in-Original no. 79/2019 dated 31.03.2019 [(C.No. VIII/10/226/2018-Airport) (OR. No. 119/2018-AIU,TRY)] ordered for the absolute confiscation of the said 3 rectangular cut pieces of gold totally weighing 112.100 grams and valued at Rs. 3,43,362/- under Sec 111(d), 111(i),111(l) and 111(m) of Customs Act, 1962 read with Section 3(3) of

the Foreign Trade (Development & Regulation) Act, 1992 and imposed a penalty of Rs. 35,000/- under Sec 112(a) & (b) of Customs Act, 1962 on the applicant.

4. Aggrieved by the said Order dated 31.03.2019, the applicant filed an appeal before the appellate authority viz, Commissioner of GST, Service Tax & Central Excise (Appeals), Trichirappalli – 620 001 who vide Order-In-Appeal No. TCP-CUS-000-APP-029-20 dated 24.04.2020 [DOI : 11.05.2020] [A.No. C24 /56 / 2019-TRY(CUS)], rejected the appeal and upheld the Order-In-Original.

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

- 5.1. that the order of the appellate authority was unjust, unfair, unfounded and was totally devoid of any merits and not sustainable.
- 5.2. that gold was not prohibited and ought to have been released on payment of redemption fine and penalty.
- 5.3. that the applicant has cited a catena of judgements wherein gold has been allowed to be released on payment of a redemption fine and penalty.

The applicant in his revision application has prayed to allow the release of the gold on payment of redemption fine under the provisions of Section 125 of the Customs Act, 1962.

6. Personal hearings in the case through the online video conferencing mode was scheduled for 02.12.2021 / 08.12.2021. Shri. B. Kumar, Advocate for the applicant appeared online on 08.12.2021 and submitted that quantity of gold was very small, it was not concealed, applicant is not a habitual offender. He informed that an additional written submission is being submitted. He requested to release goods on nominal RF and fine.

6(a). The Advocate for the applicant vide his email dated 08.12.2021 prayed for condonation of delay of 2 days as the Order-in-Appeal dated 24.04.2020 had been received on 16.05.2020.

7. On the issue of condonation of delay, Government notes that the revision application has been filed within the extension period i.e. 3 months + 3 months and the prayer is accepted and condoned.

8. At the outset, the Government notes that the Applicant had not filed a Customs declaration form for possession of any dutiable goods and upon being queried had initially replied in the negative for possession of any dutiable goods. A declaration as required under Section 77 of the Customs Act, 1962 had not been submitted and therefore, the confiscation of the 3 rectangular shaped gold cut pieces / bits was justified.

9. 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".

10. 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 'Applicants' thus, liable for penalty.

11. 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.

12. The quantity of gold under import is small and is not of commercial quantity. The gold 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.

13. The absolute confiscation of the gold, leading to dispossession of the applicant of the gold in the instant case is therefore, harsh and not reasonable. Government therefore, sets aside the impugned order of the appellate authority. The impugned 3 rectangular shaped gold cut pieces, totally weighing 112.10 gms and having market value of Rs. 3,43,362/- is allowed redemption on payment of Rs. 80,000/- (Rupees Eighty Thousand only). The Government finds that the penalty of Rs. 35,000/- (Rupees Fifteen thousand only) imposed on the applicant under Section 112(a) & (b) of the Customs Act, 1962 is appropriate and commensurate with the omission and commission committed and is not inclined to interfere in the same.

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

Shrawan
10/2/22
(SHRAWAN KUMAR)

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

ORDER No. 57/2022-CUS (SZ) /ASRA/ DATED 10.02.2022

To,

1. Shri. Mohammed Ibrahim, S/o. Abdul Khader, No. 88, New Street, 3rd Floor, Mannady, Chennai – 600 001. Tamil Nadu.
2. The Pr. Commissioner of Customs, No. 1, Williams Road, Tiruchirappali. –I, Pin : 620 001.

Copy to:

1. Shri. B. Kumar, Consultant, #117/55, Egmore High Road, Chennai – 600 008.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File,
4. File Copy.
5. Notice Board.