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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. 371/248/B/WZ/2020-RA

Date of Issue 04.08.23

ORDER NO. 374/2023-CUS (WZ) /ASRA/MUMBAI DATED 31.07.2023
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.

Applicant : Shri. Ladu Ram

Respondent : Pr. Commissioner of Customs, CSI Airport, Mumbai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. MUM-
CUSTM-PAX-APP-198/2020-21 dated 24.07.2020 issued on
30-07-2020 [F.No. S/49-294/2019] passed by the
Commissioner of Customs (Appeals), Mumbai-III.

ORDER

This revision application has been filed by Shri. Ladu Ram (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-198/2020-21 dated 24.07.2020 issued on 30.07.2020 through F.No. S/49-294/2019 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Brief facts of the case are that on 09-04-2018, the Officers of CSMI Airport Mumbai, intercepted one passenger Shri Ladu Ram, the applicant, holding Indian Passport No. R 5171243 who had arrived from Dubai by Emirates Flight No. K 500, before passing through the Exit Gate. To the query put forth to him regarding anything to declare, he had replied in the negative. Personal search and examination of his baggage resulted in recovery of one silver coloured metallic plate weighing 600grams, which was stuck with the help of two-sided grey coloured adhesive tape on the lower side of the front plate of the baggage trolley carried by him, onto which the two front wheels of the trolley are mounted. The recovered 600 grams of metal purported to be gold was examined and assayed by Government Approved Valuer who certified that 600 grams of metal plate was made of Gold having purity of 999% 24KT and valued at Rs.17,08,128/-. The same were seized by the officers in the reasonable belief that the same was smuggled into India in a clandestine manner in contravention of the provisions of the Customs Act, 1962. On conclusion of the investigation Show Cause Notice was issued on 04-10-2018.

3. The case was adjudicated by the Original Adjudicating Authority (OAA) i.e. the Addl. Commissioner of Customs, Airport, Mumbai vide Order-In-Original No. ADC/AK/ADJN/415/2018-19 dated 14-01-2019 ordered for the absolute confiscation of the 600 grams of Gold having purity of 999% 24KT, valued at Rs.17,08,128/- under under Section 111 (d), (1) and (m) of the Customs Act,

1962. Further, a penalty of Rs. 2,00,000/- was imposed on the applicant under Section 112 (a) and (b) of the Customs Act, 1962.

4. Aggrieved by this Order, the applicant preferred an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai-III, who vide Order-in-Appeal No. MUM-CUSTM-PAX-APP-198/2020-21 dated 24-07-2020 [F.No. S/49-294/ 2019] upheld the order passed by the OAA.

5. Aggrieved with the above order, the Applicants have made an exhaustive submission of case laws and have submitted copies including their submissions made before the lower authorities etc. They have filed these revision applications on the following main points:

5.01. That Gold is not prohibited item for import. Therefore absolute confiscation is not warranted in this case.

5.02. That the Petitioner claimed ownership of the gold under absolute confiscation and prayed for redemption on payment of reasonable fine and penalty.

5.03. That the facts of the case of S. Murugesan Vs Commissioner-2010(254)ELT A 15 (SC) relied upon by the Commissioner Appeals cannot be equated with the case of the Petitioner.

5.04. The applicant concluded by submitting that he did not commit any act of omission or commission which can be termed as crime or manifesting of an organized smuggling activity. He imported the gold only for making a small profit. He submitted that he is from a respectable family and a law abiding citizen/businessman and has never come under any adverse remarks and therefore the absolute confiscation and penalty imposed of Rs.2,00,000/- is too harsh.

Under the circumstances, the applicant has prayed to the Revision Authority to release the gold on payment of a reasonable redemption fine and penalty.

6. Personal hearing in the case was scheduled on 07.07.2023. Shri. Prakash Shingrani, Advocate for the applicant appeared for personal hearing and submitted that the applicant brought small quantity of gold for personal use. He further submitted that gold was not for commercial purpose and applicant is not a habitual offender. He requested to release the gold on nominal fine and penalty.

7. The Government has gone through the facts of the case and notes that the applicant had not declared the gold while availing the green channel facility. Thereafter, on interception he had been asked whether he was carrying any dutiable items to which he had replied in the negative. The impugned gold had been converted into silver coloured metallic plates which was stuck with the help of two-sided grey coloured adhesive tape on the lower side of the front plate of the baggage trolley carried by him, onto which the two front wheels of the trolley are mounted. This reveals the intention of hoodwinking the Customs and evading payment of Customs duty. The applicant clearly had failed to declare the goods to the Customs as required under Section 77 of the Customs Act, 1962. The method of concealment used reveals the mindset of the applicant to evade the payment of duty. It reveals that the act committed by the applicant was conscious and pre-meditated. Had he not been intercepted, the applicant would have gotten away with the gold concealed in his baggage trolley. The Government finds that the confiscation of the impugned gold was therefore justified.

8. 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”.

9. 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.

10. 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 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.

11. Government observes that the manner in which the gold was attempted to be brought in i.e. the impugned gold had been converted into silver coloured metallic plates which was stuck with the help of two-sided grey coloured adhesive tape on the lower side of the front plate of the baggage trolley carried by him, onto which the two front wheels of the trolley are mounted. This revealed clear intention and a systematic attempt to evade duty and smuggle the gold into India. The circumstances of the case probates that he did not have any intention of declaring the gold to the Customs at the airport. These facts have been properly considered by the Appellate Authority and the lower adjudicating authority while absolutely confiscating the gold bars.

12. The main issue in the case is the manner in which the impugned gold was being brought into the Country. The option to allow redemption of seized goods is the discretionary power of the adjudicating authority depending on the facts of each case and after examining the merits. In the present case, the manner of concealment was clever and ingenious, clear attempt to smuggle gold by concealing it into silver coloured metallic plates and sticking the same with the help of two-sided grey coloured adhesive tape on the lower side of the front plate of the baggage trolley has been made. This method adopted to smuggle gold is a fit case for absolute confiscation as a deterrent to such offenders. Thus, taking into account the facts on record and the gravity of offence, the adjudicating authority had rightly ordered the absolute confiscation of gold. The redemption

of the gold will encourage non-bonafide and unscrupulous elements to resort to concealment and bring gold. Such acts of mis-using the liberalized facilitation process should be meted out with exemplary punishment and the deterrent side of law for which such provisions are made in law needs to be invoked. The order of the Appellate authority upholding the order of the adjudicating authority is therefore liable to be upheld and the Revision Application is liable to be dismissed.

13. The Government, keeping in mind the facts of the case is in agreement with the observations of the Appellate authority and finds that absolute confiscation is proper, legal and judicious and also penalty imposed under Section 112 (a) and (b) of the Customs Act 1962 is appropriate. Government does not find it necessary to interfere in the OIA passed by the AA.

14. Accordingly, the Revision Applications filed by the applicants is dismissed.

Shrawan
31/7/23
(SHRAWAN KUMAR)

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

ORDER NO. 574/2023-CUS (WZ)/ASRA/MUMBAI DATED 31.07.2023

To,

1. Shri Ladu Ram, S/o Mr. Mohan Lal, VPO Chitalwana, Tehsil Chitalwana, Jalore -343041, Rajasthan.
2. The Pr. Commissioner of Customs, C.S.I Airport, Terminal 2, Level-II, Sahar, Andheri (East), Mumbai 400 099.
3. The Commissioner of Customs (Appeals), Mumbai-III, 5th Floor, Avs Corporate Point, Makwana Lane, Behind S. M. Centre, Andheri Kurla Road, Andheri (East), Mumbai 400 059.

Copy to:

1. Shri. Prakash K. Shingrani, Advocate, 12/334, Vivek, New MIG Colony, Bandra (East), Mumbai - 400 051.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.

