

REGISTERED  
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. 373/15/B/2020-RA / 531

Date of Issue 14.02.22

ORDER NO. 58 /2022-CUS (SZ)/ASRA/MUMBAI DATED 0.02.2022  
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. Syed Ibrahim

Respondent : Pr. Commissioner of Customs, Commissionerate - I,  
Chennai Airport and Air Cargo Complex, New Custom  
House, Meenambakkam, Chennai - 600 027.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal - Airport-  
C. Cus.I No. 01/2020 dated 02.01.2020 [C4- I/189/O/  
2019-AIR] passed by the Commissioner of Customs  
(Appeals-I), Chennai - 600 001.

ORDER

This revision application has been filed by Shri. Syed Ibrahim (herein referred to as Applicant) against the Order-in-Appeal – Airport-C.Cus.I No. 01/2020 dated 02.01.2020 [C4-I/189/O/2019-AIR] passed by the Commissioner of Customs (Appeals-I), Chennai – 600 001.

2. Briefly stated the facts of the case are that the Applicant, was intercepted on 24.4.2019 and 81 gms of gold in rubbery form, concealed in body cavity i.e. rectum were recovered. The gold of 24 carats purity, totally weighing 81 grams was extracted and converted into an ingot and valued at Rs. 2,64,465/- (Market Value) and was seized. The applicant had arrived at Anna International Airport, Chennai from Kula Lumpur by Batik Air Flight No. ID 6018/24.04.2019 Applicant had been intercepted at the exit of the arrival hall of the Anna International Airport and had revealed that he had been given the gold and was instructed to smuggle the gold by way of concealment and non-declaration to Customs and had carried the same for a monetary consideration.

3. The applicant had waived the Show Cause notice and the Original Adjudicating Authority i.e. Asstt. Commissioner of Customs (Adjudication-AIR), Chennai vide Order-In-Original No. 131/2019-20 dated 22.08.2019 [F.No. OS No. 377/2019-AIU-AIR] ordered the absolute confiscation of the seized gold weighing 81 gms, valued at Rs. 2,64,465/- under Section 111(d) & 111(l) of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992 and imposed a penalty of Rs. 20,000/- ( Rupees Twenty five thousand only ) under Section 112 of the Customs Act, 1962 on the applicant.

4. Aggrieved by the said order, the applicant filed an appeal before the Commissioner of Customs (Appeals-I), Chennai who vide Order-in-Appeal – Airport-C.Cus.I No. 01/2020 dated 02.01.2020 [C4-I/189/O/2019-AIR], rejected the appeal.

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

- 5.1. that the order of the respondent was against law, weight of evidence and circumstances and probabilities of the case;
- 5.2. that the appellate authority had failed to apply his mind and give reasons for rejecting the appeal and hence the order is liable to be set aside.
- 5.3. that no declaration card was provided by neither by the customs authority nor by any other authority and hence question of fill up the declaration card did not arise.
- 5.4. that because of non-declaration of the gold, the department could not become the owner of the gold and option under section 125 of the Customs Act 1962 with appropriate duty was not given.
- 5.5. that the gold belonged to him and he was compelled to write otherwise.
- 5.6. that the department had not made any efforts to find out who was supposed to receive the gold outside the airport and no corroboration had been made.
- 5.7. that gold was a restricted item and not prohibited goods; that ownership was not the criterion for import of gold and the gold receipts were in the name of the applicant; that the gold under seizure was not prohibited, option of redemption in terms of section 125 of the Customs Act. 1962 was mandatory.
- 5.8. that reliance is placed on the judgements passed by various forums on similar issue and even in gold concealed in rectum the gold was allowed to be re-exported.

The Applicant has prayed that the Revision Authority be pleased to set aside orders of appellate authority and to order for re-export and to reduce the penalty of Rs. 25,000/- and grant any relief and justice.

6. Personal hearings in the case was scheduled through the video conferencing mode for 03.12.2021 / 09.12.2021. Smt. Kamalamalar Palanikumar, Advocate requested to prepone the personal hearing to 07.12.2021 as she would be coming to Mumbai. Accordingly, the Advocate attended the hearing on 07.12.2021. She reiterated her written submission and during the

hearing furnished a few more case laws and pleaded for a lenient view and to release the gold on reasonable RF and penalty.

8. The Government has gone through the facts of the case. The Applicant was intercepted at the exit gate after he had walked through the green channel. He had not filed a Customs Declaration Form. To queries whether he was carrying any dutiable goods, the applicant had replied in the negative. The impugned gold was kept secreted in his body cavity i.e. rectum. It is clear that the applicant had resorted to concealment to evade duty. This action manifests that applicant had no intention to pay the Customs duty. The Applicant had not declared the impugned gold as required under section 77 of the Customs Act, 1962. In this case, the quantum of gold seized is not important. The type of concealment adopted to evade duty is important. The applicant had pre-planned and selected the method that he would use to avoid detection and thereby to evade Customs duty. The absolute confiscation of the gold is therefore justified and thus, the Applicant had rendered himself liable for penal action.

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 'Applicant' thus, is 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 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. Government also observes that the manner in which the gold was concealed i.e. inside his own body, reveals the intention of the Applicant. It also

reveals his criminal bent of mind and a clear intention to evade duty and smuggle the gold into India even to the point of risking his life. The circumstances of the case especially the concealment method adopted, probates that the Applicant had no intention of declaring the gold to the Customs at the airport. All these have been properly considered by the Appellate Authority and the lower adjudicating authority while confiscating the gold pieces absolutely.

13. 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 being clever and ingenious with a clear attempt to smuggle gold, it is a fit case for absolute confiscation which would also be a deterrent to such offenders. Thus, taking into account the facts on record and the gravity of the offence, the adjudicating authority had rightly ordered the absolute confiscation of gold. But for the intuition and the diligence of the Customs Officer, the gold would have passed undetected. Hon'ble Delhi High Court in the case of Jain Exports Vs Union of India 1987(29) ELT753 has observed that, "*the resort to Section 125 of the C.A. 1962, to impose fine in lieu of confiscation cannot be so exercised as to give a bonanza or profit for an illegal transaction of imports.*". The redemption of the gold will encourage non bonafide and unscrupulous elements to resort to concealment and bring gold. If the gold is not detected by the Custom authorities the passenger gets away with smuggling and if not, he has the option of redeeming the 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.

15. The Government finds that the penalty of Rs. 25,000/- imposed on the applicant under Section 112 of the Customs Act, 1962 is appropriate and commensurate with the omission and commission committed by the applicant. The Government does not find it necessary to interfere in the order passed by the appellate authority.

16. 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 and judicious and also, the penalty imposed under Section 112 of the Customs Act 1962 is proper and judicious. Also, since the impugned gold has been confiscated absolutely, question of its re-export does not arise.

17. Revision Application is dismissed.

  
( SHRAWAN KUMAR )

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

ORDER No. 58 /2022-CUS (SZ) /ASRA/ DATED 02.02.2022

To,

1. Shri. Syed Ibrahim, S/o. Abdul Jaleel, Old no. 116, New No. 221, Bakthavachalam Colony, 3<sup>rd</sup> St. Vyasarpadi, Chennai – 600 039.
2. Pr. Commissioner of Customs, Commissionerate – I, Chennai Airport and Air Cargo Complex, New Custom House, Meenambakkam, Chennai – 600 027.

Copy to:

1. Shri. Kamalamalar Palanikumar, Advocate, No. 10, Sunkurama Street, Chennai – 600 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File,
4. File Copy.
5. Notice Board.