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

F.No. 373/86/B/2020-RA / 521

Date of Issue 14.02.22

ORDER NO. 66/2022-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. Thameem Ansari S/o. Mohamed Kareem

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

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
AIRPORT.Cus.I.No. 05/2020 dated 07.01.2020
[C4/I/210/O/2019-AIR] passed by Commissioner of
Customs (Appeals-I), Chennai 600 001.

ORDER

This revision application has been filed by Shri. Thameem Ansari, S/o. Mohamed Kareem (herein referred to as Applicant) against the Order-in-Appeal No. AIRPORT. Cus.I.No. 05/2020 dated 07.01.2020 [C4/I/210/O/2019-AIR] passed by Commissioner of Customs (Appeals-I), Chennai 600 001. The passport no. of the applicant / address as per the details recorded in Order-in-Original are R6336870 issued on 21.12.2017 at Madurai and No. 24/55, Bagathur Alam Street, Pudur Post, Ilyangudi, Sivaganga, Tamil Nadu – 630 709 (residential address).

2. Brief facts of the case are that the applicant who arrived at the Anna International Airport, Chennai on 28.11.2018 from Dubai onboard Emirates Flight (No.544) 28.11.2018 was intercepted at exit of arrival hall of airport on the basis of a suspicion that he might be carrying gold/contraband in baggage or person. Examination of his checked-in baggage resulted in the recovery of 8 nos. of old and used Lenovo Thinkpad laptops without accessories, 10 cartons of Gudang Garam cigarettes and one kg Iranian Saffron of Grade I filaments. During personal search of the applicant, a gold cut bit weighing 35 grams was found in his pocket. Also, the applicant admitted that he had concealed gold in his rectum and voluntarily ejected two bundles containing rubbery spread, totally weighing 200 gms from which 117 grams gold of purity 24 karat totally valued Rs.7,86,600/- was extracted from the spread. Thus, (i). a total of 152 grams of gold valued at Rs. 4,82,600/-; (ii). 08 nos of Lenovo Thinkpad old and used laptops without accessories, totally valued at Rs. 40,000/-; (iii). 10 cartons of Gudang Garam cigarettes totally valued at Rs. 24,000/- and (iv). 1 kg of Iranian Saffron of Grade I filaments valued at Rs. 2,40,000/- was recovered from the applicant. The overall value of all the aforesaid goods was Rs. 7,86,600/-. As the applicant was not eligible to import the gold into India and was neither in possession of any document/permit/licence for the import of the impugned gold into India nor had declared the same and had attempted to smuggle the gold by concealment, the same were seized under section 110 of Customs Act, read with section 3(3) of the Foreign (Development Regulation)

1992 for further action under the said act. The 8 nos. old and used laptops being of commercial quantity, too were seized. The Iranian saffron was seized since the applicant could not produce any FSSAI certificate. The 10 cartons of Gudang Garam cigarettes which were of commercial quantity were also seized since the packets did not contain appropriate pictorial warning required under Cigarettes and Tobacco Products (Prohibition Advertisement Regulation of Trade Commerce, Production, Supply Distribution) Act, 2003 COTPA. The applicant admitted that all the said goods had been given to him by a person named Abdul Rehman at Dubai airport with instructions to hand over the same to a person who would identify him outside the Chennai airport. Applicant had been promised a sum of Rs.10,000/- for carrying the goods and admitted that he was aware that smuggling of gold without a declaration was an offence. Applicant also admitted that he had attempted to smuggle the goods by way of non-declaration and concealment without valid documents for monetary benefit.

3. The applicant waived the show cause notice and the adjudicating authority viz, Asstt. Commissioner of Customs, (Adjudication - AIR), Chennai vide Order-in-Original No. 155/2019-20-Commissionerate - I dated 03.09.2019 [OS. No. 568/2018-AIU-AIR] ordered for the absolute confiscation of (i). the 152 grams of gold of value at Rs.4,82,600/-; (ii). 08 nos of old and used Lenovo Thinkpad laptops valued @ Rs.5000/-each, (iii). 10 cartons of Gudang Garam cigarettes valued at Rs. 24,000/- and (iv). 1 Kg of Iranian Saffron Grade-I filaments value Rs.2,40,000/- under Section 111(d) and (1) of the Customs Act, 1962 read with Sec 3(3) of the Foreign Trade (Development & Regulation) Act, 1992 and also imposed a personal penalty of Rs.80,000/- under Section 112(a) of Customs Act, 1962 on the applicant.

4. Aggrieved with the Order, the applicant filed an appeal before the appellate authority viz, Commissioner of Customs (Appeals-I), Chennai 600 001, who vide Order-in-Appeal No. AIRPORT.Cus.I. No. 05/2020 dated 07.01.2020 [C4/I/210/O/2019-AIR] upheld the (i). absolute confiscation of 152 grams of gold of value at Rs.4,82,600/-; ((ii). 10 cartons of Gudang Garam cigarettes valued at Rs. 24,000/- and (iii). 1 Kg of Iranian Saffron Grade-I

filaments value Rs.2,40,000/- and allowed the release of the 08 nos of old and used Lenovo Thinkpad laptops without accessories totally valued @ Rs.40,000/ on payment of redemption fine of Rs. 6000/- under Section 125 (1) of the Customs Act within 90 days from the date of communication of this order and on payment of appropriate baggage duty on laptops.. Further, the penalty of Rs. 80,000/- which had been imposed by the original adjudicating authority under Section 112 (a) of the Customs Act,1962 was upheld.

5. Aggrieved with the order of the Appellate authority, the Applicant has filed this revision application inter alia on the grounds that;

- 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 saffron which was a perishable commodity had been claimed by the applicant but the same had not been allowed to be cleared on payment of duty.
- 5.3. that applicant was in the red channel and no attempt had been made to go to the green channel.
- 5.4. that he was abandoning the cigarettes.
- 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.

Applicant has prayed to the revision authority to set aside the absolute confiscation and imposition of penalty in the impugned order and permit him to re-export or release the gold and other goods and to render 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.

8. The Government has gone through the facts of the case. The Government observes that the applicant had not declared the goods. The impugned gold was kept secreted in his body cavity. It is clear that the applicant had resorted to concealment to evade duty. By this action, it is clear 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 quantity of gold seized does not matter, what matters is the type of concealment adopted to evade duty. The applicant had pre-planned and selected this ingenious and risky method of body concealment 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. Also, the cigarettes, laptops and saffron carried by the applicant were of commercial quantity. The applicant had not declared these goods and was intercepted at the exit gate after he had crossed the green channel. The cigarettes do not bear the pictorial details and therefore its sale in the open market is banned. The quantity of saffron found with the applicant indicates that the same was for commercial sale. Therefore, confiscation of these goods viz, laptops, cigarettes and saffron was justified.

10. 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”.

11. 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.

12. 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.

13. 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 revealed his criminal bent of mind and a clear intention to evade duty and smuggle the gold into India. The Applicant had a short stay abroad and was ineligible for import of gold. 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 absolutely.

14. 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 clear attempt 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. 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 for confiscation of the gold is therefore liable to be upheld.

15. Cigarettes are restricted and hazardous and it was incumbent on the applicant to have declared the same upon arrival. The facts of the case reveal that a declaration of the impugned goods was required to be made by the Applicant as required under Section 77 of the Customs Act, 1962. However, the applicant had failed to do so. Also, none of the cigarette cartons bear the pictorial health warning as required under the Cigarettes and other Tobacco products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 read with Cigarettes and other Tobacco products (Packing and Labelling) Rules, 2008. Such cigarette packets which do not bear the pictorial health warning are proscribed to be sold in India. Hence, such cigarettes are prohibited for sale or consumption. The cigarettes brought were also of commercial quantity, thus warranting absolute confiscation of the goods. In view of the aforesaid facts, the Government is of the opinion that the absolute confiscation of the goods is justified and therefore liable to be upheld. In any case, the applicant had stated his intention of abandoning the cigarettes.

16. With regard to the saffron which was of commercial quantity, the appellate authority has observed that *'in the absence of FSSAI Certificate, import of 1 kg saffron cannot be permitted. Even till disposal of this case no FSSAI certificate was produced by the appellant'*. The Government is in agreement with the said observation of the appellate authority and is inclined not to interfere in the same.

17. Government notes that the 8 laptops were in used condition. The appellate authority has allowed the same to be redeemed on payment of a

redemption fine of Rs. 6000/-. Government finds the same to be proper and is not inclined to interfere in the same.

18. Government notes that the appellate authority has upheld the penalty of Rs. 80,000/- imposed on the applicant by the original adjudicating authority. Government finds that the penalty imposed on the applicant is commensurate with the omissions and commissions committed and is not inclined to interfere in the same.

19. From the foregoing paras, the Government does not find it necessary to interfere in the Order passed by the appellate authority and the revision application filed by the applicant fails.

20. The revision application is dismissed.


(SHRAWAN KUMAR)

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

ORDER No. 60/2022-CUS (SZ) /ASRA/

DATED 10.02.2022

To,

1. Shri. Thameem Ansari S/o. Mohamed Kareem, No. 24/55, Bagathur Alam Street, Pudur Post, Ilyangudi, Sivaganga, Tamil Nadu - 630 709
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.