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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. 373/259/B/15-RA/2059

Date of Issue 17.03.2021

ORDER NO. 60/2021-CUS (SZ)/ASRA/MUMBAI DATED 08.03.2021 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 Sameer Kodiyal P.

Respondent : Commissioner of Customs(Airport), Cochin

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. COC-CUSTM-000-APP-504/14-15 dated 23.04.2015 passed by the Commissioner of Customs (Appeals), Cochin.

ORDER

This revision application has been filed by Shri Sameer Kodiyal P. (herein after referred to as the Applicant) against the Order in appeal No. COC-CUSTOM-OOO-APP-504/14-15 dated 23.04.2015 passed by the Commissioner of Customs (Appeals), Cochin.

2. Briefly stated the facts of the case are that the officers of AIU, Customs intercepted the Applicant, who had arrived from Dubai on 18.07.2013, at the exit after he cleared himself through the green channel. When questioned whether he had brought any dutiable goods he replied in the negative. A personal search of the passenger and removal of his shoes, resulted in the recovery of a two gold bars of 1 kg each wrapped to his feet. The gold bars totally weighing two kilograms were valued at Rs. 52,18,830/- (Rupees Fifty two lakhs Eighteen Thousand Eight hundred and Thirty).

3. The Original Adjudicating Authority vide Order-In-Original No. 24/2014 dated 20.08.2014 ordered absolute confiscation of the impugned gold, and imposed penalty of Rs. 10,00,000/- (Rupees Ten lakhs) under section 112 (a) of the Customs Act, 1962 on Applicant.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. COC-CUSTOM-OOO-APP-504/14-15 dated 23.04.2015, rejected the Appeal of the Applicant.

5. Aggrieved with the above order the Applicant department has filed this revision application interalia on the grounds that;

5.1 The orders are not legal or proper. 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 the declaration made by the applicant was fully corresponding with the goods imported by the Applicant. The Applicant has not made any declaration which attract the provisions of Sec 111 (m) of the Customs Act.

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. The adjudicating authority has 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 good to order for absolute confiscation/re-export. As per section 125 of the Customs Act. 1962, if goods are found liable for confiscation and if it is prohibited goods, it is the discretion of the adjudicating authority whether to allow the owner of the goods to redeem the same. However, in present case, the goods are not prohibited and as per said provision, adjudicating authority shall give to the owner of the goods an option to pay fine in lieu of confiscation The issue regarding absolute confiscation of goods is considered by various High Courts. While considering the issue, Hon'ble High Court of Andhra Pradesh in Shaikh Jamal Basha Vs GOI reported in 1997 (91) ELT 277 (A.P.) and in the matter of Yakub Ebrahim Yuseph Vs CC Mumbai reported in 2011 (263) ELT 685 (Tri Mum) .

5.5 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 penalty.

5.6 That the adjudicating authority failed to appreciate that ethe 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.

5.7 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.

5.8 The adjudicating authority failed to appreciate the fact that the Applicant himself opened his handbag and showed the gold bar to the officer. No contraband was recovered from the checked in baggage or from the body of the applicant. Orther than used personal goods, there were no dutiable items along with the accompanied baggage.

5.9 That 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.

5.10 In view of the above the Applicant submitted that the impugned orders are liable to be set aside. To direct the Respondent to release the gold on payment of fine in lieu of confiscation. Any other order or orders deemed fit and proper by the Hon'ble Revision Authority 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 facts of the case, The Applicant was intercepted at the exit after he had cleared himself through the Green Channel. On enquiry he denied carrying any dutiable items. Personal search of the passenger and removal of his shoes, resulted in the recovery of a two gold bars of 1 kg each wrapped to his feet. The gold bars totally weighing

two kilograms were valued at Rs. 52,18,830/- The facts regarding the interception and subsequent detection are not in dispute.

8. The Applicant did not file any declaration as required under section 77 of the Customs Act, 1962. The confiscation of the gold bars is therefore justified and the Applicant has rendered herself liable for penal action. The original adjudicating authority in its order dated 20.08.2014 has noted that the Applicant had left India on 13.07.2013 and had returned on 18.07.2013, the Applicant was neither an eligible passenger nor was he carrying sufficient foreign currency so as to remit customs duties. The gold bars were brought ingenuously concealed, by wrapping them to his feet inside his socks and shoes so as to hoodwink the Customs officers and smuggle the gold into India. The Applicant has also not satisfactorily explained how he procured the gold, having worked as a tailor and as his trip to Dubai was for search of a job.

9. The Applicant has contended that gold is not a prohibited item. 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, makes the applicant an "ineligible passenger" and has made the impugned gold "prohibited" and therefore liable for confiscation and the Applicants thus liable for penalty.

11. In view of the above, the original Adjudicating authority has confiscated the impugned gold absolutely and imposed a penalty of Rs.10,00,000/- on the Applicant. The Appellate Authority in its order dated states "*I find that in the personal search and other corroborative evidence, it was established beyond doubt that, the appellant had willfully engaged in smuggling and violated the provision of sec 77 of the Customs Act 1962 and read with Foreign Trade (D & R) Act 1992 It appears that, the appellant proceeded to Dubai on 13-07-2013 and returned to Kochi on 18-07-2013. It is clear from the above short visit of the appellant that he was not eligible to import of gold and his intention was to smuggle the gold out of the country, evading customs duty. The appellant has contravened the provision of Section 77 and the provisions of Sec 111 of Customs Act. Penalties are imposed on any person who, in relation to any goods, does or omits to do as act which renders such goods liable for confiscation. I find no reason to dispute the order of the original authority to confiscate the impugned goods. I further find that, the absolute confiscation and personal penalty imposed on the appellant are commensurate with the act or omission on the part of the appellant and I refrain from interfering on it".*

12. Government further observes that the manner in which the gold was concealed, reveals the intention of the respondent. It also revealed his criminal bent of mind and a clear intention to evade duty and smuggle the gold into India. Further, the passenger opted for the green channel. Had the passenger not been intercepted he would have made good with two kilograms of gold. The manner of concealment being clever and ingenious is a fit case for absolute confiscation as a deterrent to passengers misusing the facility of green channel. Thus, taking into account the facts on record and the gravity of offence, the adjudicating authority had rightly ordered the absolute confiscation of gold and the order has been rightly upheld by the Appellate

authority. The order of the Appellate authority is therefore liable to be upheld and the Revision Application is liable to be dismissed.

13. The Revision Application is accordingly dismissed.

Shrawan
8/3/21

(SHRAWAN KUMAR)

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

ORDER No. 60/2021-CUS (SZ) /ASRA/Mumbai

DATED-0803.2021

To,

1. Shri. Sameer Kodyal P., Kodyil House, Paikannur P.O.,
Malappuram-679590.

Copy to:

2. The Commissioner of Customs, Cochin International Airport, Cochin.
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.