



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/185/B/2016-RA (3068 : Date of Issue : 22.08.2022

ORDER NO. 703 /2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED 28.07.2022
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.

(i). F.No. 373/185/B/SZ/2016-RA

Applicant : Shri. Riyaz Ahmed

Respondent : Pr. Commissioner of Customs, Anna International Airport,
Meenambakkam, Chennai - 600 027.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal
C.Cus.I.No. 281/2016 dated 14.07.2016 through F.No.
C4-1/202/O/2016-AIR passed by the Commissioner of
Customs (Appeals-I), Custom House, Chennai - 600 001.

ORDER

This revision application has been filed by Shri. Riyaz Ahmed (hereinafter referred to as the Applicant) against the Order-in-Appeal C.Cus.I.No. 281/2016 dated 14.07.2016 through F.No. C4-1/202/O/2016-AIR passed by the Commissioner of Customs (Appeals-I), Custom House, Chennai – 600 001.

2(a). Brief facts of the case are that the applicant who had arrived from Dubai by Air India Flight No. AI-906 dated 20.10.2015 was intercepted while he was passing through the green channel. To query put forth to him about possession of any dutiable goods, the applicant had replied in the negative. On examination of his hand baggage, 4 nos. of Apple i-phones 6S(128GB), Apple i-phone 6SPlus (64GB), Apple MAC Book PRO Laptop Model No. A1502 were found. Further, during the course of personal search 2 ring shaped gold pieces of 24 carats purity, totally weighing 322 gms, valued at Rs. 8,76,162/- were recovered from the pocket of the pant worn by him. As the applicant was not in possession of any valid permit / license / document issued by any competent authority for the legal import of the said gold and the electronic items and he had not declared the same and had attempted to smuggle the same by concealment and non-declaration and also, since the gold and electronic items did not constitute to be bonafide baggage, the same were seized under the provisions of the Customs Act, 1962 read with Sec. 3(3) of the Foreign Trade (Development & Regulation) Act, 1992.

3. The Original Adjudicating Authority (OAA), viz, Jt. Commissioner (CH-VII), Anna International Airport, Chennai vide Order-In-Original No. 506 / 2016-17-AIRPORT dated 29.03.2016 issued through F.No. O.S. No. 1174/2015-AIR ordered for the (i). absolute confiscation of the impugned 2 ring shaped gold pieces weighing 322 gms and valued at Rs. 8,76,162/- under Section 111(d) and (l) of the Customs Act, 1962 read with Sec. 3(3) of the

Foreign Trade (Development & Regulation) Act, 1992.; (ii). confiscation of the 4 nos. of Apple i-phones 6S(128GB) valued at Rs. 2,48,000/-, the Apple i-phone 6SPlus (64GB) valued at Rs. 62,000/- and the Apple MAC Book PRO Laptop Model No. A1502 valued at Rs. 75,000/-, all the said electronic goods totally valued at 3,85,000/- under Section 111(d) and (l) of the Customs Act, 1962 read with Sec. 3(3) of the Foreign Trade (Development & Regulation) Act, 1992. However, the electronic goods were allowed to be redeemed on payment of fine of Rs. 1,90,000/- and applicable duty.; (iii). A penalty of Rs. 1,30,000/- was imposed on the applicant under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant preferred an appeal before the appellate authority (AA) viz, Commissioner of Customs (Appeals-I), Custom House, Chennai - 600 001, who vide Order-in-Appeal C.Cus.I.No. 281/2016 dated 14.07.2016 through F.No. C4-1/202/O/2016-AIR, modified the OIO passed by the OAA to the extent that (i). the redemption fine on the electronic goods totally valued at Rs. 3,85,000/- was reduced to Rs. 1,00,000/- from Rs. 1,90,000/- and (ii). the penalty on applicant of Rs. 1,30,000/- under Section 112(a) of the Customs Act, 1962 was reduced to Rs. 75,000/-. The absolute confiscation of the 2 ring shaped gold pieces weighing 322 gms of 24 carat purity and valued at Rs. 8,76,162/- found on the person of the applicant was held to be proper and correct.

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

5.01. that OIO confiscating the impugned gold valued at Rs.8,76,162/- and imposing a penalty of Rs.1,30,000/- and the OIA upholding the entire order-in-original are arbitrary in nature in view of the facts that the applicant at any point had not attempted to clear the impugned gold without payment of duty.

5.02. that the OAA had patently erred in imposing a hefty penalty of Rs.1,30,000/- on the applicant and the AA had also not appreciated the evidence in favour of the applicant and left the order-in-original without any interference.

- 5.03. that the OAA had ought not to have denied the applicant the opportunity of re-export of the impugned gold, which was sought by the applicant during personal hearing and through appeal.
- 5.04. that the OAA had failed to appreciate that there was no allegation of concealment or attempt to smuggle, without any declaration, whatsoever by the applicant and denied him the eligibility of legal import / re-export of the impugned gold.
- 5.05. that if the applicant is deprived of the impugned gold by confiscation to the Government, he will be put to extreme hardships and misery, which will have a telling effect on his family life; the applicant is undergoing untold misery, mental trauma and stiff financial situation due to the confiscation of the impugned gold.
- 5.06. that applicant had not filed any other revision application.

The applicant in this revision application has prayed for setting aside the OIA; permit the re-export the impugned gold upon redemption; permit the impugned gold to be cleared for home consumption on payment of merit rate of duty; to reduce further / set aside the reduced penalty of Rs.75,000/-, imposed under Section 112(a) of the Customs Act, 1962; to extend the benefit of eligible free allowance on the import of impugned electronic items representing personal effects before assessing the same for import customs duty;

6. Personal hearing was scheduled for 31.10.2018. Thereafter on the change of the Revisionary Authority, personal hearing through the online video conferencing mode was scheduled for 20.08.2021, 27.08.2021, 26.10.2021, 09.11.2021 and on 08.12.2021 . No one appeared for the applicant / respondent. Sufficient opportunities have been given to the applicant and respondent to put forth their case. The case is being taken up for a decision on the basis of evidence available on the records.

7. The Government has gone through the facts of the case and notes that the applicant had failed to declare the goods in his possession as required under Section 77 of the Customs Act, 1962. The applicant had not disclosed that he was carrying dutiable goods and had he not been intercepted would have walked away with the impugned 2 nos of ring-shaped gold pieces without declaring the same to Customs. The electronic goods too had not been declared. By his actions, it was clear that the applicant had no intention to declare the impugned

gold and electronic goods to Customs and pay Customs duty on it. The Government finds that the confiscation of the gold and electronic goods 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 applicant thus, liable for penalty.

10. Section 125 of the Customs Act, 1962 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 even in prohibited goods. 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. The Government notes that the quantum of gold recovered from the applicant is very small. There is allegation that the 2 ring shaped gold pieces was found in the pocket of the pant worn by the applicant. A case has not been made out that the 2 ring shaped gold pieces had been ingeniously concealed. Further, there is no allegation that the applicant was a habitual offender involved in similar smuggling in the past. Considering the quantum of gold involved, Government finds that this is a case of non-declaration of gold rather than smuggling. The demeanor of the applicant is required to be considered while confiscating the gold and imposing penalty. Considering the aforesaid facts, Government is therefore inclined to allow the release of the 2 ring shaped gold pieces on payment of a redemption fine and applicable duty.

12. Insofar as the electronic goods is concerned, Government notes that the same were confiscated and allowed to be redeemed on payment of a fine. The

Government notes that the appellate authority has accepted the submissions and plea made by the applicant and has reduced the redemption fine and also the personal penalty. Government finds that the order passed by the appellate authority is legal and judicious. Insofar as the electronic goods and personal penalty is concerned, Government is not inclined to interfere in the order passed by the appellate authority.

13. In view of the above, the Government modifies the order passed by the appellate authority only to the extent of allowing the redemption of the 2 ring shaped gold pieces, totally weighing 322 gms and valued at Rs. 8,76,162/- on payment of a fine of Rs. 3,75,000/- (Rupees Three Lakhs Seventy Five Thousand Only).

14. The Revision application is disposed of on the above terms.

Shrawan
20/7/22
(SHRAWAN KUMAR)

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

ORDER NO. 703/2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED 20.07.2022.

To,

1. Shri. Riyaz Ahmed, S/o. Ashraf Ali, No. 25, Manikara Street, Kumbakonam Taluk, Thanjavur Dist.-612 001.
2. Pr. Commissioner of Customs, Anna International Airport, Meenambakkam, Chennai - 600 027.

Copy to:

1. Riyaz Ahmed, C/o. AB Consultancy Services, Flat No. 3, First Floor, Kala Flats, 84 / 78, Dr. Ranga Road, Mylapore, Chennai - 600 004.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.