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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. 371/100/B/2021-RA/7298 :

Date of Issue: 06.09.2023

ORDER NO. 710 /2023-CUS (WZ)/ASRA/MUMBAI DATED 28.09.2023
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.

Applicants : Ms Rumana Mustaq Supariwala

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-CUSTOM-PAX-APP-659/2020-21 dated 14.01.2021
[F.No. S/49-806/2019] [Date of issue: 14.01.2021]
passed by the Commissioner of Customs (Appeals),
Mumbai-III.

ORDER

This Revision Application has been filed by Ms Rumana Mustaq Supariwala (herein referred to as the "Applicant") against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-659/2020-21 dated 14.01.2021 [F.No. S/49-806/2019] [Date of issue: 14.01.2021] passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Brief facts of the case are that on 11.07.2018, the Officers of Customs at CSI Airport, Mumbai, intercepted Ms Rumana Mustaq Supariwala, the applicant, holding Indian Passport No. M1008932, who had arrived from Sharjah by Air India Express Flight No. IX 252, at the exit gate, after she had cleared herself through Green Channel. The personal search of the Applicant in the presence of independent punches resulted in recovery of i) one hair band worn by her containing five yellow coloured metallic coins, purported to be gold and ii) five yellow coloured metallic bars, one cut piece of yellow coloured metallic bar, seven yellow coloured metallic coin and one round shaped melted gold piece (all purported to be gold) were found in the kneecap which were cleverly concealed under the Salwar worn by her. The recovered metal purported to be gold were examined by the Government approved valuer and certified that the impugned metal were gold and totally weighed 745 grams and collectively valued at Rs.20,79,424/-. 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. During the investigation it was found that the applicant is a frequent traveler and had travelled abroad 16 times within a short period of 15 months. After completion of the investigation Show cause notice was issued on 07.01.2019.

3. The Original Adjudicating Authority (OAA) viz the Additional Commissioner of Customs, C.S.I. Airport, Mumbai, vide his OIO no. ADC/AK/ADJN/76/2019-20 dated 21-06-2019 ordered for absolute confiscation of the recovered gold totally weighing 745 grams and collectively valued at Rs. 20,79,424/-/- under Section 111 (d), (l) and (m) of Customs Act, 1962. A personal penalty of Rs 2,30,000/- under section 112(a) & (b) of the Customs Act, 1962 was also imposed on the applicant.

4. Aggrieved, with this Order, the Applicant filed an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai-III, who vide Order-in-Appeal No. MUM-CUSTOM-PAX-APP-659/2020-21 dated 14.01.2021 [F.No. S/49-806/2019] [Date of issue: 14.01.2021] 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 Notification No.50/2017 dated 30-06-2017 is only an exemption notification and that they did not claim the said exemption;

5.02. That Gold is not prohibited item for import and the gold imported by them was not liable for absolute confiscation;

5.03. That the decisions of Tribunals, High Court etc relied upon by the petitioner were rejected by the Adjudicating authority without proper application of mind; that factual situation of the case of the applicant fits in with the decisions on which reliance was placed; that the order of

the Appellate Authority is not sustainable on account of bias violations of principles of natural justice and fair play;

- 5.04. That the decisions relied upon by the Commissioner of Customs (Appeals) are not applicable in their case;
- 5.05. That the applicant claimed ownership of the goods and redemption of the gold on reasonable fine and penalty;
- 5.06. That the penalty of Rs.2,30,000/- imposed on the applicant is disproportionate to the value of the gold imported by him and imposition of heavy penalty is not sustainable
- 5.07. The applicant concluded by submitting that it was a single and solitary incident of an alleged act of smuggling and can never be justifiable ground for absolute confiscation of the goods; that the act of the applicant cannot be termed as crime or manifesting of an organized smuggling activity; that he committed the mistake only with an intention to save little money and for making a small profit and that he was not a habitual offender. The applicant submitted that she is from a respectable family and a law abiding citizen and has never come under any adverse remarks

Under the above circumstances of the case, the applicants prayed to Revision Authority for a reasonable order for redemption of the gold on payment or reasonable fine and penalty and drop further proceedings against her.

6. Personal hearing in the case was scheduled on 02.08.2023. Shri. Prakash Shingrani, Advocate for the applicant appeared for personal hearing and submitted that the applicant brought some jewellery and small quantity of gold for personal purposes. He requested to allow redemption of the same 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 she had been asked whether she was carrying any dutiable items to which she had replied in the negative. The impugned gold was recovered only during the personal search of the applicant. The impugned gold i.e. bars, coins and pieces had been ingeniously concealed in the hair bands and knee caps and the kneecaps were concealed under the salwar worn by her which shows the intention of the applicant of hoodwinking the Customs and evading payment of Customs duty. The quantity of gold was quite substantial and the gold was of high purity, indicates that the same was for commercial use. The applicant clearly had failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. The ingenuity used reveals the mindset of the applicant to not only evade duty but smuggle the gold. It also reveals that the act committed by the applicant was conscious and pre-meditated. The applicant had been given an opportunity to declare the dutiable goods in her possession but having confidence in the nature of her concealment, she denied carrying any gold. Had she not been intercepted, the applicant would have gotten away with the gold concealed ingeniously. Therefore, the confiscation of the gold was 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. 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 besides the substantial quantum of gold which indicates that it was for commercial use, the manner in which it was attempted to be brought into the country is vital. The impugned gold was cleverly, consciously and ingeniously coated with silver which reveals the intention of the applicant. Further the applicant is found to be a frequent traveler and had travelled several times and was aware of rules and regulations. The aforesaid circumstances of the case and ingenious method of concealing

the gold in the hair bands and knee caps and concealed the kneecaps under the salwar worn by her, 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 Original Adjudicating Authority while ordering the absolute confiscation of the gold and appellate authority had upheld the same.

12. 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, conscious and ingenious, quantity and type of gold being for commercial use, this being a clear attempt to brazenly smuggle the impugned 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 the impugned gold. But for the intuition and the diligence of the Customs Officer, the gold would have passed undetected. 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. Government is in agreement with the order of the OAA absolutely confiscating the impugned gold. The absolute confiscation of the gold would act as a deterrent against such persons who indulge in such acts with impunity.

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. Government does not find it necessary to interfere with the same.

14 Government finds that the penalty of Rs.2,30,000/- imposed under Section 112 (a) and (b) of the Customs Act 1962 is appropriate and commensurate with the omissions and commissions of the Applicant.

15. Accordingly, the Revision Application filed by the applicant is disposed of as above

Shrawan
28/9/23
(SHRAWAN KUMAR)

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

ORDER NO. 710 /2023-CUS (WZ)/ASRA/MUMBAI DATED 28.09.2023

To,

1. Ms Rumana Mustaq Sopariwala, Flat No. 704, Tower Bridge, Near Dahnmora Camp, Adajan Patiya, Rander Road, Surat-395009.
2. Ms Rumana Mustaq Sopariwala, C/o Advocate Prakash K. Shingarani, 12/334, Vivek, New MIG Colony, Bandra East, Mumbai-400051
3. The Pr. Commissioner of Customs, C.S.I Airport, Terminal 2, Level-II, Sahar, Andheri (East), Mumbai 400 099.
4. The Commissioner of Customs (Appeals), Mumbai-III, 5th Floor, Avas Corporate Point, Makwana Lane, Behind S.M.Centre, Andheri Kurla Road, Andheri (East), Mumbai 400 059.

Copy to:

1. Prakash K. Shingarani (Advocate), 12/334, Vivek, New MIG Colony, Bandra East, Mumbai-400051
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.

