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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. 373/264/B/15-RA/2013

Date of Issue 17.03.2021

ORDER NO. 76/2021-CUS (SZ)/ASRA/MUMBAI DATED 11.03.2021 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 Shahbas Hussain.

Respondent : Commissioner of Customs(Airport), Chennai

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 694/2015 dated 30.10.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

ORDER

This revision application has been filed by Shri Shahbas Hussain. (herein after referred to as the Applicant) against the Order in appeal No. 694/2015 dated 30.10.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case are that the officers of Customs intercepted the Applicant, who had arrived from Dubai on 07.04.2015, as he was walking out of the through the green channel. When questioned whether he had brought any dutiable goods he replied in the negative. An examination of his hand baggage was conducted and after emptying the personal effects, the bag was found to be unusually heavy. The bag was cut open to reveal black coated gold wires used as metal support (beading). 23 pieces of gold wires totally weighing 454 grams were recovered, totally valued at Rs. 12,38,512/- (Rupees Twelve Lakhs Thirty eight Thousand Five hundred and Twelve).

3. The Original Adjudicating Authority vide Order-In-Original No. 175/2015-16-AIRPORT dated 30.06.2015 ordered absolute confiscation of the impugned gold, and imposed penalty of Rs. 1,50,000/- (Rupees One lakh fifty thousand) 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. 694/2015 dated 30.10.2015, rejected the Appeal of the Applicant.

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

5.1 Because the Ld. Commissioner of Customs (Appeals) failed to appreciate that the appellant has been falsely implicated in the above mentioned case as stated in paras 2 to 4 of this appeal. The appellant being a NRI was legally entitled to bring the gold wires in question and he did verbally declare gold wires in question before the concerned customs officers when he was questioned as explained in Para 2 of this appeal. However, the appellant was falsely implicated

in the above mentioned due to some altercation with the custom officers regarding the duty to be paid for the release of the gold wires. Therefore, on this ground alone the impugned order is liable to be set aside.

5.2 The appellant had legally brought the gold wires in question and therefore, on this ground alone the impugned order is liable to be set aside.

5.3 Because the Ld. Commissioner of Customs (Appeals) erred while upholding the order of Joint Commissioner of Customs on the appellant and not releasing the gold wires of the appellant which he had brought for the marriage of his three daughters. The future of the daughters of the appellant will be ruined in case the gold wires are not released as soon as possible. It is submitted that the appellant is the sole bread winner of his family consisting of his wife, three daughters of marriageable age and three sons. Therefore the respondent erred while imposing such a heavy penalty amount on the appellant and not releasing the gold wires of the Appellant. Therefore, on this ground also the impugned order is liable to be set aside.

5.4 Because the Ld. Commissioner of Customs (Appeals) failed to appreciate that the Joint Commissioner of Customs erred while observing in para 14 of the impugned order that the appellant had attempted to smuggle the gold bars for monetary benefits and he was a carrier. It is submitted that the appellant had clearly stated in his so called voluntary statement u/s 108 of the Customs Act, 1962, allegedly recorded by the Customs officers that he had brought the gold wires for the marriage of his daughters and he was the owner of the gold which he had brought out of loan from his friends. It is submitted that therefore, Ld. Joint Commissioner erred while observing that the appellant was a mere carrier and had brought the gold bars for monetary benefits. Statement of the Appellant was partly voluntary and partly involuntary which he was forced/coerced to make by the Customs Officers. Therefore even as per the case of the department the Appellant had claimed the gold wires in question and was the owner of the gold wires. The Ld. Joint Commissioner has wrongly stated that the appellant was a mere carrier. Thus, the Ld. Joint Commissioner of Customs should have released the gold wires unconditionally or on payment of redemption fine under section 125 of the Customs Act, 1962.

5.5 In fact in a recent judgement of the Hon'ble High Court of Mumbai in the case of Union of India Vs. Dhanak M. Ramji [2009 (248) ELT 127 Bombay] the gold was released as the applicant claimed to be the owner of the gold and no other person claimed titled thereof. The Hon'ble High Court held that the gold was not prohibited item but became prohibited due to breach of law by the passenger. This order has been upheld by the Hon'ble Supreme Court of India while disposing S.L.P. filed by the department in the case of Union of India Vs. Dhanak M. Ramji reported in 2010 (252) El T A102 SC. This particular judgement was followed by the Addl. Commissioner of Customs, IGI Airport, Terminal -3, New Delhi, in the case of Paramjit Singh.

5.6 In view of the latest judgement as mentioned above of the Hon'ble Supreme Court of India the gold wire of the Appellant should have been released by the Commissioner (Appeal), Chennai. The ld. Commissioner (Appeals) failed to appreciate that facts of SLP(C) No. 2207/2000 relied by the Joint Commissioner of Customs, Chennai are different as in that case there was no averment that the appellant required the gold in question for the marriage of his daughters but it seeks in that case that the appellant was a smuggler of gold for making profit out of the sale of gold. Therefore, on this ground also the impugned order is liable to be set aside.

5.7 In view of the foregoing , it is respectfully prayed that the impugned orders may kindly be set aside.

6. In view of the above, personal hearing in the case was held on 02.03.2021. Smt. Sangita Bhayana, Advocate attended the said hearing online on behalf of the Applicant and reiterated the submissions already made on the subject. She submitted that her client was working overseas and had brought the gold for the marriage of his daughters. Therefore she requested for the release of gold on nominal 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 as he was walking through the Green Channel. On enquiry he denied carrying any dutiable items. Personal search of the hand baggage carried by the passenger, resulted in the recovery of gold wires ingeniously concealed

as metal support (beading) of the hand bag. The gold wires totally weighing 454 gms were valued at Rs. 12,38,512/-. The facts regarding the concealment, 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 wires is therefore justified and the Applicant has rendered herself liable for penal action. The original adjudicating authority in its order dated 30.06.2015 has noted that the Applicant in his statement to the customs authorities has stated that he had carried the gold by keeping it concealed in his bag beadings as he wanted to avoid payment of customs duty, he has done this to make fast money to meet the expenses of his daughters marriage. There is no evidence to support the fact that the Applicant is an eligible passenger. The impugned gold was ingenuously concealed as support wires of the hand bag carried by the Applicant, so as to hoodwink the Customs officers and smuggle the gold into India.

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.), in para 47 of the said case the Hon'ble High Court has observed that *"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 Applicant thus liable for penalty.

10. In view of the above, the original Adjudicating authority has confiscated the impugned gold absolutely and imposed a penalty of Rs.1,50,000/- on the Applicant. The Appellate Authority in its order dated states *"On reasonable suspicion, detailed examination of the baggage and person was done under Mahazar proceedings and the impugned black colour coated gold wires concealed ingeniously inside the metal support beading around the hand baggage brought by the Appellant was recovered. This ingenious concealment establishes a clear mensrea. Further, the Appellant in his voluntary statement before the Custom Officers, immediately seizure, has admitted to have done offence to make fast*

money to meet the expenses of his daughter's marriage. At the appeal stage also the appellant has not substantiated his eligibility with any documentary evidence. The case laws referred by the appellant are distinguishable as being factually different in their cause.

6. I find that the passenger has concealed the black colour coated gold wires in an ingenious and wrongful way. This is an open and shut case of gold being attempted to be smuggled into the country by yet another way of ingenious concealment. In view of the above discussions and circumstances, I uphold the order and reject the appeal. The penalty imposed on the Appellant is just and does not warrant any interference."

12. Government further observes that the manner in which the gold was concealed, reveals the intention of the respondent. It also revealed his 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 the gold. The manner of concealment being clever and ingenious makes it a fit case for absolute confiscation. 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
11/03/21
(SHRAWAN KUMAR)

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

ORDER No. 76/2021-CUS (SZ) /ASRA/MUMBAI DATED 11-03.2021

To,

1. Shri. Shahbas Hussain, 3324, Gali Sawar Khan, Kucha Pandit, P. S. Hauz, Qazi, Delhi-110006.

Copy to:

2. The Commissioner of Customs(Airport) New Custom House, Meenambakkam, Chennai.

3. Smt. Sangita Bhayana, Advocate, Chamber no. 707, LCB-III, High Court of Delhi-110003.

4. Sr. P.S. to AS (RA), Mumbai.

5. Guard File. , 6. Spare Copy.