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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. 373/58/B/15-RA / 2023

Date of Issue 18.03.2021

ORDER NO. 77/2021-CUS (SZ)/ASRA/MUMBAI DATED 15.03.2021 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 Shaik Sirajuddin.

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. CUS No. 1267 dated 28.07.2014 passed by the Commissioner of Customs (Appeals), Chennai.

ORDER

This revision application has been filed by the Shri Shaik Sirajuddin (herein referred to as Applicant) against the order C. CUS No. 1267 dated 28.07.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Shaik Sirajuddin at the Anna International Airport, Chennai on 23.12.2012 at the exit after he was walking out through the Green Channel. When questioned whether he was in possession of gold he replied in the negative, as the Applicant appeared to be nervous. An examination of his baggage/person was conducted which resulted in the recovery of a "Chairman" perfume container. As the perfume container was found to be unusually heavy, it was opened and 7 gold bars totally weighing 733.190 grams valued at Rs. 22,56,392/- (Rupees Twenty Two lakhs Fifty six thousand Three hundred and Ninety two) were recovered.

3. After due process of the law vide Order-In-Original No. 99/06.02.2014 dated 06.02.2014 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (i) and (ii) of the Customs Act, and imposed penalty of Rs. 2,25,000/- (Rupees Two lakhs Twenty five thousand) under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by this order the Applicant filed appeals with the Commissioner of Customs (Appeals), The Commissioner (Appeals) vide its order C. CUS No. 1267 dated 28.07.2014 rejected the Appeal and upheld the order of the Original Adjudicating Authority.

5. Aggrieved with the above order the Applicant has filed this revision application inter alia for the following reasons;

5.1 The Order passed by the first appellate authority is not maintainable and bad in law.

5.2. The appellate authority had not considered the submission of fact that the appellant never knew the presence of gold in the perfume tin and carried the same in good faith.

5.3 The applicant submits that he had no intention of smuggling the gold and he would not have been the beneficiary of evasion of customs duties. The show cause notice also did not allege any intention and did not adduce any evidence to establish any wrongful intention on the part of the appellant.

5.4 The applicant was well within the customs area and did not attempt to leave the area before being cleared by the customs authorities. The gold was recovered from his baggage and was not concealed by him, there was only a failure to declare the gold which is rightly attributed to the lack of knowledge of its presence inside the perfume tin brought by the appellant. When the applicant had no knowledge of the seized gold, no allegation of 'smuggling' could be made against him.

5.5 It is humbly submitted that the original authority and the first appellate authority have covered up the flaws of the investigating officers and the adjudicating authority/ First Appellate authority in the instant case have assumed the role of investigating officers at the stage of adjudication and first appeal stage. It is submitted that the acts of both the original authority as well as the first appellate authority do not have any legal sanction and hence unlawful.

5.7 The appellate authority had not considered the fact that the applicant was confined to the customs area inside the airport and was in total control of the customs officers. More so, no time and opportunity were given to seek legal advice and the entire proceedings were completed without giving any legal assistance at all to the applicant.

5.8 It is humbly submitted that the adjudicating authority and the first appellate authority have relied upon decisions of courts and appellate authorities to confirm the confiscation. It is humbly submitted that these decisions relate to the period when there was strict control over import of gold. Now, gold can be imported on payment of customs duty and hence applying the ratio of decisions which prevailed at the time of rigid control is not reasonable and cause injustice to the applicant.

5.9 The entire process of seizure got over on the same day of arrival. It is pertinent to mention here that none of the pleading of the applicant was brought on record and the appellant's ignorance and absence of

knowledge of English language were exploited in the entire proceedings. The seizure and arrest proceedings were completed on the same day in favour of the department which infringed the rights of the applicant.

5.10 At the time of the proceedings in this case, the custom authorities have failed to record his pleas and the applicant was made to sign the documents prepared by the customs authorities in English. The applicant was not explained about the proceedings in the language known to him. absence of knowledge of English language were exploited in the entire proceedings.

5.11 It is further submitted that the Central Board of Excise and Customs in its instruction in para 9.4 of chapter 30 has provided as follows: "whenever the goods confiscated are not prohibited goods, an option is to be given as per section 125 of the Customs Act to pay a fine known as redemption fine of quantum as the adjudicating authority deem it in lieu of confiscation- . Since the gold is not a prohibited item, the Respondent / Accused would have agreed to pay the redemption fine u/s 125 of the Customs Act. Instead the gold in question has been confiscated by the authorities.

5.12 The appellate authority did not consider the appellant's plea on this aspect legally and has acted in excess of his powers in upholding the confiscation. Under these circumstances, it is humbly submitted that the above provision makes it mandatory that a realistic option be given to the appellant to pay a fine in lieu of confiscation of the goods in question. The Honourable courts and Tribunal have consistently held that such an option shall be given to the importer/possessor in the following decisions.

5.13 The Applicant submitted case laws in support of his case and pleaded that the impugned orders are may be set aside and allow release of the gold on payment of appropriate redemption and set aside the penalty.

6. In view of the above, personal hearing in the case was held on 09.03.2021. Shri M Manimaman, Advocate attended the said hearing on behalf of the Applicant and reiterated the earlier submissions made. He requested to allow the redemption of the goods by imposing minimum redemption fine. He also requested for reducing penalty as there was misuse

of trust by his friend. Nobody attended the hearing on behalf of the Respondent.

7. The Government has gone through the case records. It is observed that the Applicant did not declare the gold bars as required under section 77 of the Customs, Act, 1962 and was intercepted at the exit after passing through the green channel and attempted to clear the gold bars without payment of customs duty, therefore the confiscation of the gold bars is justified. Once the gold bars are held liable for confiscation, the misdemeanor/ transgression of the passenger is held as confirmed and therefore imposition of personal penalty on the passenger becomes necessary.

8. The original adjudicating authority in its order dated 06.02.2014 has noted that "*the Applicant in his voluntary statement in his own handwriting, that his friend Bakash had asked him to take some gold biscuits with him to India; that his friend told him that the gold biscuits are kept in a perfume tin, that he kept the gold biscuit containing perfume tin in his checked-in baggage of brown cardboard carton; that he knew it was an offence to conceal gold and not declare to Customs and that he did this for the money of Rs.20,000/- promised by his friend Bakash. As such, it is amply clear that Shri Shaik Sirajuddin has knowingly indulged in this act of smuggling of gold bars for the monetary consideration promised by his friend Bakash and as such he cannot feign ignorance or claim to have been duped by his above friend. As regards the redemption sought, it is clear from the above that Shri Shaik Sirajuddin is not the owner of the seized gold bars and that he has acted only as a carrier for smuggling the same into India. Also, where the seized gold bars have been rendered liable for confiscation, as discussed below, penalty is liable to be imposed on Shri Shaik Sirajuddin as per Section 112(a) of the Customs Act, 1962.*" Thus it is clear that Applicant has willingly accepted to smuggle the gold into India for monetary consideration. The submission that the applicant never knew the presence of gold in the perfume tin and carried the same in good faith, and that he was duped by his friend is a ruse to absolve himself of penal liabilities. The Applicant appeared nervous when he was quizzed whether he was carrying gold which prompted the officers to conduct a detailed examination of his baggage. It is also observed that the Applicant has given the above statement in his own hand writing, clearly indicating that he is

educated and was well aware of his own recordings and therefore he cannot feign ignorance that it was in a language not known to him.

9. Government also notes that the passenger is not an "eligible" passenger to import gold. In addressing the contention of the Applicant that gold is not a prohibited item, Government contends that 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.*

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, has made the impugned gold "prohibited" and therefore liable for confiscation and the Applicants thus liable for penalty.

11. It is clear that the Applicant has acted as a carrier and he is not the owner of the gold. He attempted to smuggle the gold into India for monetary considerations. On one hand he claims to have been duped by his friend and on the other hand he pleads of release of the gold bars, which do not belong to him. The Original Adjudicating authority has confiscated the impugned gold absolutely and imposed a penalty of Rs.2,25,000/- on the Applicant. Thus, taking into account the facts on record and the gravity of offence, the

Government notes that 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 liable to be dismissed.

11. The Revision Application is accordingly dismissed.

Shrawan
15/3/21

(SHRAWAN KUMAR)

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

ORDER No. 77/2021-CUS (SZ) /ASRA/MUMBAI

DATED 15-03.2021

To,

1. Shri Shaik Sirajuddin, 10/276, 28A, Aisha Nagar, Bellary Road, Kaddappa, Andhra Pradesh.
2. The Commissioner of Customs(Airport) New Custom House, Meenambakkam, Chennai.

Copy to:

3. Shri M. Maniraman, Advocate, 109, Additional Law Chambers, High Court Complex, Chennai.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.