



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/140/B/15-RA/2687

Date of Issue 09.04.2021

ORDER NO 25/2021-CUS (SZ)/ASRA/MUMBAI DATED 30.03.2021 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 T. Ramesh.

Respondent : Commissioner of Customs(Airport), Chennai

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus-I No. 172/2015 dated 17.04.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

ORDER

This revision application has been filed by Shri T. Ramesh. (herein after referred to as the Applicant) against the Order in appeal C. Cus-I No. 172/2015 dated 17.04.2015 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 Singapore on 20.04.2014, as he was walking out of the green channel. When questioned whether he had brought any dutiable goods he replied in the negative. As the Applicant appeared nervous an examination of his person and baggage was conducted. The personal search resulted in the recovery of one gold biscuit weighing 100 grams from his pant pocket. The examination of his baggage resulted in the recovery of two Jalan Solar Rechargeable batteries. The officers recovered 10 gold biscuits from one battery and 9 gold biscuits from the other battery. A total of 20 gold biscuits totally weighing 2000 grams were recovered, totally valued at Rs. 60,00,000/- (Rupees Sixty Lakhs) were recovered from the Applicant.

3. The Original Adjudicating Authority vide Order-In-Original No. 85/05.02.2015 dated 05.02.2015 ordered absolute confiscation of the impugned gold biscuits, and imposed penalty of Rs. 6,00,000/- (Rupees Six lakhs) under section 112 (a) and (b) 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. 172/2015 dated 17.04.2015, upheld the absolute confiscation and reduced the penalty imposed to Rs. 4,00,000/- (Rupees Four lakhs) and rejected rest of the Appeal of the Applicant.

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

5.1 The applicant was innocent and ignorant of the concealment of the gold biscuits in the batteries.

5.2 If he was aware of the concealment and a party to the act of concealment, the applicant would have claimed the gold biscuits;

5.3 The fact of not claiming the gold biscuits was not considered in imposing the penalty, in as much as redemption fine is imposed for wiping out the margin and penalty to deter from future act of smuggling.

5.3 When the goods were not redeemed there was no profit, but the entire value is the loss suffered. Similarly, there was no incident to show that the applicant was a regular / repetitive offender.

5.4 The rationale laid down in imposing penalty in the settled case laws is not considered. As per settled case laws only nominal penalty is warranted when there was no claim for the gold. and

5.5 The applicants reserve their rights to submit any additional grounds at the time of personal hearing.

It is most respectfully prayed for setting aside the Order in Appeal No.172 / 2015 dated 17.04.2015, in so far as it relates to imposition of penalty of Rs.4,00,000/- under Section 112(a) and 112(b) of the Customs Act, 1962 or pass any other order as deem fit under the above facts and circumstances of the case.

6. In view of the above, personal hearing in the case was held on 12.03.2021. Shri S. Vadivelu, Advocate attended the said hearing online on behalf of the Applicant and reiterated the submissions already made. He submitted that the passenger was innocent and penalty may kindly be reduced. 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. A search of his person resulted in the recovery of one gold biscuit and the search of his baggage resulted in the recovery of 19 gold biscuits ingeniously concealed in two "Jalan Solar Rechargeable batteries." The facts regarding the concealment, interception and subsequent detection are not in dispute.

8. The Applicant in his revision application has stated that he was innocent and ignorant of the concealment of the gold biscuits in the batteries. Government however notes that in his statement dated 20.04.2014 before the Customs authorities he has stated that "*he stayed several times in Singapore with his family friend Shri Nagaraj,he went for Shri. Nagaraj's sister-in-law marriage*

and stayed over there. By that time on 19.4.14, his friend Sh. Nagaraj gave him the two nos. of JALAN sealed rechargeable battery NP7-12 (12V7, AH/20HR)/201-1R) and informed him that the two solar batteries contained gold biscuits in which one has 10 x 100g biscuits another 9 x 100g biscuits and gave 1 x 100g biscuits to keep conceal in T. Ramesh pant pocket and after clearance to keep the same in his Travels Office or in his house and somebody from Shri. Nagaraj house would come and collect the said gold biscuits from him and offered Rs.50000/- for doing the work; that as such he kept one solar battery in his Laptop bag and other in his lock Stroller suitcase and one no. gold biscuit in his pant pocket". The statement clearly indicates that the Applicant was fully aware of the concealed gold and has willingly accepted to carry the gold for a monetary consideration. Therefore the Applicant's contention in the grounds of the revision application that "If he was aware of the concealment and a party to the act of concealment, the applicant would have claimed the gold biscuits." is just a ruse to avoid penal liabilities.

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 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.6,00,000/- on the Applicant. The Appellate Authority in its order has reduced the penalty to Rs. 4,00,000/-. The Applicant has contended that he has not claimed the gold biscuits and this was not considered by the Appellate Authority in imposing the penalty. The order of the Appellate authority para 5 states "*Now coming to the next contention that the penalty imposed was disproportionate to the offence, I find that there is some force in the argument that as the appellant was declared as*

"carrier", the gold and the appellant are alienated from each other and therefore, the personal penalty cannot be imposed in relation to the value of the goods-only but should be on the basis of magnitude of offence.

6. In view of the above facts and discussions, I find that the personal penalty imposed is not in consonance with the offence committed by the appellant. Also considering the fact that there is no previous offence registered against the appellant, I reduce the personal penalty from Rs.6,00,000/- to Rs.4,00,000/- (Rupees four lakhs only) to meet the ends of justice." The Applicant's above stated contention is therefore without any basis.

11. Government further observes that the non-declaration of the gold and the manner in which the gold was concealed, reveals the Applicants 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 absolute confiscation has been rightly upheld by the Appellate authority. Government is not inclined to interfere with the order. The order of the Appellate authority is therefore liable to be upheld and the Revision Application is liable to be dismissed.

12. The Revision Application is accordingly dismissed.

Shrawan
20/03/21
(SHRAWAN KUMAR)

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

ORDER No. 85/2021-CUS (SZ) /ASRA/

DATED 30.03.2021

To,

1. Shri. T. Ramesh.

Copy to:

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

3. Shri. S. Vadivelu, Advocate, No. 12, General Collins Road, Choolai, Chennai-600 112.

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

5. Guard File. ,

6. Spare Copy.