

REGISTERED
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. 371/393/B/2022-RA | 8388

Date of Issue : 15.12.23

ORDER NO. 912 /2023-CUS (WZ)/ASRA/MUMBAI DATED 13/12.2023 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.

Applicant : Mr. Stanley Louis Chettiar

Respondent : Pr. Commissioner of Customs, Airport-I, Mumbai

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-2006/2021-22 dated 31.03.2022 passed by the Commissioner of Customs (Appeals), Mumbai-III.

ORDER

This revision application has been filed by Mr. Stanley Louis Chettiar (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-2006/2021-22 dated 31.03.2022 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Brief facts of the case are that on 06.04.2021, the officers of CSMI Airport, Mumbai intercepted one passenger Mr. Stanley Louis Chettiar (hereinafter referred to as the applicant) holding Indian Passport No. 23370301 who had arrived from Dubai by Air india flight No. IX 248. The applicant cleared himself without any declaration of dutiable goods to Customs. On personal search, the officers recovered 01 crude gold bracelet and 02 crude gold rings totally weighing 107 grams, totally valued at Rs.4,30,025.

3. The case was adjudicated and the impugned gold chain was confiscated absolutely under Section 111 (d) of Customs Act, 1962. The personal penalty Rs.25,000/- was imposed under Section 112 of Customs Act, 1962 by the Adjudicating Authority.

4. Aggrieved by this Order, the Applicant preferred an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai-III, who vide Order-in-Appeal No. MUM-CUSTM-PAX-APP-2006/2021-22 dated 31.03.2022 rejected the appeal and upheld the OIO.

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 revision application on the following main points:

5.01. Gold is not prohibited item for import. Therefore, gold imported by the applicant was not liable for absolute confiscation in this case;

5.02. the decisions relied upon by the Appellate Commissioner are not applicable to the case of the applicant;

- 5.03. Applicant is an NRI and lives in Sharjah for more than 15 years. The used personal gold jewellery seized from him were purchased in the year 2016 and were in his personal use since then. Absolute confiscation of personal jewellery not sustainable.
- 5.04. The purity of the gold jewellery under absolute confiscation is only 22KT whereas the valuation of the jewellery was assessed as 24 Kt jewellery and arbitrarily at Rs 4,30,025/-.
- 5.05. Applicant claims ownership of the goods and redemption of the gold for re-export.
- 5.06. The applicant has prayed to the revisionary authority for a reasonable order for redemption of the gold jewellery under absolute confiscation on payment of reasonable fine for re- export and to drop further proceedings against him.

6. Personal hearing in the case was scheduled on 17.08.2023. Shri. Prakash Shingrani, Advocate for the applicant appeared for personal hearing and submitted that the applicant who is NRI brought small quantity of gold jewelry for personal use. He requested to allow redemption of the same on nominal fine and penalty for reexport.

7. The Government has gone through the facts of the case and notes that the applicant had failed to declare the goods in her 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, he would have walked away with the impugned gold jewellery i.e. bracelet & rings , without declaring the same to Customs. By his actions, it was clear that the applicant had no intention to declare the impugned gold to Customs and pay duty on it. The Government finds that the confiscation of the gold was therefore, justified.

10. 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”.

11. 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.

12. 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.

13. The Government notes that the quantity of gold jewelry was small. The applicant has claimed ownership of the gold and his desire to take it back. There are no allegations that the Applicant is a habitual offender and was involved in similar offences earlier. The facts of the case indicate that it is a case of non-declaration of gold rather than a case of smuggling for commercial considerations. Under the circumstances, the seriousness of the misdemeanour is required to be kept in mind when using discretion under Section 125 of Customs Act, 1962 and while imposing quantum of penalty. Government notes that the applicant who is a foreign national has prayed that the absolute confiscation be set aside and he be allowed to re-export the gold.

14. In a recent judgement passed by the Hon'ble High Court, Madras on 08.06.2022 in WP no. 20249 of 2021 and WMP No. 21510 of 2021 in r/o. Shri. Chandrasegaram Vijayasundarm + 5 others in a similar matter of Sri.

Lankans wearing 1594 gms of gold jewellery (i.e. around 300 gms worn by each person) upheld the Order no. 165 – 169/2021-Cus (SZ) ASRA, Mumbai dated 14.07.2021 in F.No. 380/59-63/B/SZ/2018-RA/3716, wherein Revisionary Authority had ordered for restoration of OIO wherein adjudicating authority had ordered for the confiscation of the gold jewellery but had allowed the same to be released for re-export on payment of appropriate redemption fine and penalty.

15. In view of the foregoing paras, the Government finds that as the applicant had not declared the gold jewelry at the time of arrival, the confiscation of the same was justified. However, considering the quantity of gold, the same not being concealed in an ingenious manner, applicant being an NRI, the absolute confiscation of the same was harsh and not justified. In view of the aforesaid facts and considering that the applicant is a NRI, option to re-export the impugned gold on payment of redemption fine should have been allowed. Considering the above facts, Government is inclined to modify the absolute confiscation upheld by the AA and allow the impugned gold jewelry to be re-exported on payment of a redemption fine.

16. The Government finds that the personal penalty of Rs. 25,000/- imposed on the applicant under Section 112(a) of the Customs Act, 1962 is commensurate with the omissions / commissions committed.

17. In view of the above, the Government modifies the order passed by the appellate authority and allows the applicant to redeem the impugned gold jewelry i.e. 01 crude gold bracelet and 02 crude gold rings, weighing 107 grams, collectively weighing 128 gms and valued at Rs. 4,30,025/- for re-export on payment of a redemption fine of Rs. 80,000/- (Rupees Eighty Thousand Only). The penalty of Rs. 25,000/- imposed on the applicant under Section 112(a) and (b) of the Customs Act, 1962 by the OAA is sustained.

18. Revision Application is decided / disposed of on the above terms.

Shrawan
13/12/23
(SHRAWAN KUMAR)

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

ORDER NO. 912 /2023-CUS (WZ)/ASRA/MUMBAI DATED 13.12.2023.

To,

1. Mr. Stanley Louis Chettiar, B-5, Raya Cottage, Marol Military Road, Marol, Andheri East, Mumbai-400059.
2. Pr. Commissioner of Customs, Airport-I, Chhatrapati Shivaji Maharaj International Airport, Terminal-2, Level-2, Andheri East, Mumbai - 400 099.

Copy to:

1. The Commissioner of Custom Appeals, Mumbai-III, Awas Corporate Point(5th Floor), Makwana Lane, Behind S. M. Centre Andheri-Kurla Road, Marol, Mumbai-400059.
2. Shri. Prakash Shingrani(Advocate), 12/334, Vivek, New MIG Colony, Bandra East, Mumbai - 400 051
3. Sr. P.S. to AS (RA), Mumbai.
4. File Copy.
5. Notice Board.

