

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. 371/19/B/17-RA

2527

Date of Issue

05.04.2021

ORDER NO. 92 /2021-CUS (WZ)/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 Vijay Shankar Chitale

Respondent : Pr. Commissioner of Customs, Mumbai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-000-PAX-655-16-17 dated 22.02.2017 passed by the Commissioner of Customs (Appeals), Mumbai.

ORDER

This revision application has been filed by Shri Vijay Shankar Chitale (herein referred to as Applicant) against the order MUM-CUSTOM-000-PAX-655-16-17 dated 22.02.2017 passed by the Commissioner of Customs (Appeals), Mumbai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Vijay Shankar Chitale, a domestic passenger at the Mumbai International Airport, on 05.08.2014 after he had cleared himself out of the green channel. He was subjected to a metal detector scan and found carrying two gold bars and two cut pieces of gold concealed in the socks inside his shoes totally weighing 2707 grams valued at Rs. 69,17,657/- (Rupees Sixty nine lacs Seventeen thousand Six hundred and Fifty seven).

3. After due process of the law vide Order-In-Original No. ADC/RR/ADJN/371/2015-16 dated 29.02.2016 the Original Adjudicating Authority ordered absolute confiscation of the gold bars and imposed penalty of Rs. 7,00,000/- (Rupees Seven Lacs) under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals), The Commissioner (Appeals) vide his order allowed redemption fine of the gold on payment of Rs. 12,00,000/- (Rupees Twelve lacs) and upheld the personal penalty imposed and allowed 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 Ld. Appellate authority has ordered release of the gold but on payment of heavy fine and penalty, without giving any justification for the same.

5.2 It is therefore, prayed the redemption fine and penalty may be substantially reduced or any other order as deemed fit.

6. In view of the above, personal hearings in the case were scheduled on 24.10.2018, 05.12.2019 and 12.12.2019. Nobody attended the hearing on

behalf of the department. Shri A. M. Sachwani, Advocate appeared on behalf of the Applicant, He submitted that the Applicant is a domestic passenger, and therefore imposition of redemption fine and penalty is not warranted.

6.1 In his written submissions he stated that the crucial aspects of the case is that the passenger arrived from Ahmedabad. This itself is sufficient reason to exercise the option under section 125 of the Customs Act, 1962. That there is nothing in the order to reflect about the exact incident of import of the offending goods in India to substantiate smuggling and its mode. The investigations also failed to find out about the alleged owner of the gold or to whom the gold was to be delivered at Mumbai. The order only mentions about 'unknown persons'.

6.2 The adjudicating authority has not commented on the submissions made in para 6. The point raised is that the passenger was domestic, therefore the question of payment of any duty and declaration would not arise as the issue of declaring the gold in domestic flight has been removed from the Customs. Therefore to fill the Customs Declaration form in the domestic flight would not arise.

6.3 The Ld. Adjudicating Authority as well as the Appellate Authority has not appreciated this point while passing the Adjudication Order and while passing the Appeal order.

6.4 The Appellant submits that the transport of gold from Ahmedabad to Mumbai in a flight does not require any license from the Customs or from any Government Authority to transport the goods from one city to another city. Therefore the entire seizure of gold on 05.08.2014 is illegal and incorrect. This point has been neither discussed by the adjudicating authority as well as the appellate authority except relying on a statement which cannot be relied in this case as enforcing the Customs Act in the domestic flight would not arise and therefore recording of statement u/s. 108 of the Customs Act would not arise.

6.5 The appellant was not summoned and no investigation was done in respect of the alleged incident that the said gold was given by some passenger in the flight. If it was the case of the Customs that the alleged gold was given by some passenger, the name of the passenger list was very much available with the Custom by which it could have been investigated. The officers of AIU have failed to prove such allegations in

the SCN. Therefore, the entire case is made on assumptions and presumptions.

6.6 The Appellant submits that the Appellate authority while releasing the gold and imposition of fine of Rs. 12,00,000/- has not appreciated this fact that in the present case there was a seizure of gold, the profit of margin on domestic sale and purchase of the gold is limited to Rs. 5 to 10 per gram from one city to another city and in addition to that the appellant has been asked to pay duty of 36% and penalty of Rs. 7,00,000/-. Therefore, question of any profit arising in transporting the goods from Ahmedabad to Mumbai is totally zero. The appellant has paid customs duty plus fine plus penalty on the day of clearance of the goods. Therefore, the Appellant has made a loss from transporting the goods from Ahmedabad to Mumbai.

6.7 The Appellate Authority in para no. 14 had said that there are various judgments for the purpose of imposition of redemption fine is to wipe out margin of profit. While observing this fact, the adjudicating authority has not discussed what is the difference between prices in Ahmedabad and in Mumbai and what was the profit of margin.

7. The Government has gone through the case records. It is observed that the applicant was a domestic passenger in the international flight coming to Mumbai via Ahmedabad. But the impugned gold was discovered after he was subjected to a metal detector scan. The two gold bars and two cut pieces of gold weighing more than 2 kgs, were concealed in the socks inside his shoes. Further, the gold was foreign marked as "LS FINE GOLD 999.9 1.000 G LS ASSAYER MELTER LS-Nikko AAA 1426AE66 & AA 1426AE88" and the 2 gold bits were marked as "LS ASSAYER MELTER LS-Nikko AAA 1426AE87 & PMAP SUISSE". The Applicant was travelling on domestic route but it was an international flight. The fact that gold was concealed in the socks worn by the passenger, is unusual for a domestic passenger who, does not have to resort to such concealment to carry gold. The impugned gold was wrapped in a black coloured cello tape.

8. In his initial statements dated 05.08.2014 recorded soon after his interception the Applicant has stated that "an *unknown person who met him in*

the flight gave him the said packets and told him to hand over the same to another person who will be waiting outside CSI Airport, Mumbai; that he does not have any details of the said unknown person who had handed over the gold bars to him and that he had met the said unknown person for the first time.....and told him to keep the said packets containing gold inside the toilet outside CSI Airport, Mumbai; that a packet containing Rs.10,000/- will be kept there for him in the said toilet outside CSI Airport, Mumbai;". In his statement he also stated that " that the place where he resides along with his parents and family in Pune was owned by his father; that he has a garage from where he earns around Rs.8,000/- to Rs.9,000/- per month; that he does not have any other property in India; that he does not have any Bank Account". Being of such modest means it is therefore established that gold worth around Rs. 69 lakhs that he has been found to be in possession of, does not belong to him. These above facts therefore lead us to the conclusion that the initial statements were true and that he accepted to carry the smuggled gold and he has done this act for monetary gains.

9. The Original adjudicating authority in his order dated 29.02.2016 has categorically stated that the Applicant has not been able to the disprove the allegations against him in the show cause notice. The Applicant has abated the act of smuggling and therefore has absolutely confiscated the gold. The Appellate authority has noted that the Applicant being a domestic passenger is good enough reason to exercise the option under section 125 of the Customs Act, 1962. Further noting that there is nothing in the order to reflect about the exact incident of import of the offending goods in India to substantiate smuggling and its mode. Pointing out the lacunae's in the investigations, wherein the person who has handed over the gold and the fact that the person who was to receive the gold has not been intercepted/traced, The Appellate authority has extended the option of redemption. Be that as it may the Government would not like to contest the conclusions of the Appellate authority especially in the absence of any application to the contrary, before this authority, by the Respondent Department.

10. The Revision Applicant has in his prayer, in the revision application has also accepted the redemption, albeit pleading for reduction of the redemption fine and penalty. However, in his written submissions after the personal

hearing has prayed for setting aside the duty imposed, redemption fine and penalty. Government observes that, the Appellate authority has used his discretion, and allowed redemption on reasonable redemption fine and penalty. Considering facts of the case, the plea of the Revision Applicant for release of the gold on reduced redemption fine and penalty is not justified. In view of the above, the impugned order in appeal is required to be upheld. The Revision Application is therefore liable to be dismissed.

11. Revision application is accordingly dismissed.

(Shrawan Kumar)
30/3/21

(SHRAWAN KUMAR)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 92/2021-CUS (WZ) /ASRA/

DATED 30.03.2021

To,

1. Shri Vijay Shankar Chitale, HB 32/2 Ganapati Mandira Front, Shani Mandi Lagattacha Bhag Dairy farm Road, Bujamandali Pimparivsgshire Tehsi Haveli, Pune district, Maharashtra 411 017.
2. The Pr. Commissioner of Customs, CSI Airport, Mumbai

Copy to:

3. Shri A. M. Sachwani- Advocate, Nulwala Building, Ground Floor, 41-Mint Road, Opp. G.P.O. Fort, Mumbai 400 001.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.