



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

F.No. 380/97/B/WZ/2018-RA / 840

Date of Issue 24.02.2022

ORDER NO. 95/2022-CUS (WZ)/ASRA/MUMBAI DATED 23.02.2022 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 : Commissioner of Customs, CSI Airport, Mumbai.

Respondent : Ms. Amal Mohamed Ahmed Elhag.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-554/18-19 dated 19.09.2008 [F.No. S/49-91/2018 Appeals] passed by the Commissioner of Customs (Appeals), Mumbai - III.

ORDER

This revision application has been filed by the Commissioner of Customs, CSI Airport, Mumbai (herein referred to as the Applicant) against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-554/18-19 dated 19.09.2008 [F.No. S/49-91/2018 Appeals] passed by the Commissioner of Customs (Appeals), Mumbai - III.

2. Brief facts of the case are that the respondent who is a Sudanese National arrived at the CSI Airport on 11.03.2017 from Khartoum via Bahrain by Gulf Air Flight No. GF064 was intercepted by the Customs Officers near the exit gate. The respondent had cleared herself through the green channel and she was carrying a checked-in trolley bag and one brown coloured ladies purse. On screening her purse, the image of the metallic sling consisting of metallic rings and attached to the purse appeared to be darker than usual. The metallic sling of the purse was assayed by a Government Approved Valuer and it was confirmed that the same was made of gold. The gold sling weighing 550 grams, valued at Rs. 15,21,786 was seized under Section 110 of the Customs Act, 1962 on the reasonable belief that the same was attempted to be smuggled into India in a clandestine manner in contravention of the provisions of the Customs Act, 1962.

3. The Original Adjudicating Authority i.e. Addl. Commissioner of Customs, CSI Airport, Mumbai vide Order-In-Original No. ADC/AK/ADJN/134/2017-18 dated 31.01.2018 [S/14-5-66/2017-18 (SD/INT/AIU/67/2017 AP'B)] ordered for the absolute confiscation of the gold under Section 111(d), 111(l) & 111(m) of the Customs Act, 1962. Penalty of Rs. 1,50,000/- (Rupees One Lakh Fifth Thousand only) under Section 112 (a) and (b) of the Customs Act, 1962 was imposed on the respondent.

4. Aggrieved by the said order, the respondent filed an appeal before the Commissioner of Customs (Appeals), Mumbai -III who vide MUM-CUSTM-PAX-APP-554/18-19 dated 19.09.2008 [F.No. S/49-91/2018 Appeals] allowed the redemption of the impugned gold for re-export on payment of a redemption fine of Rs. 2,75,000/-. The penalty imposed on the respondent was upheld.

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

5.1. that the respondent had failed to make a true declaration of the contents of the baggage to Customs as required under Section 77 of the Customs Act, 1962 and therefore, the goods under seizure were liable for confiscation under Section 111(d), 111(l) & 111(m) of the Customs Act, 1962.

5.2. that the gold seized was in such a form where its identity was consciously concealed and came under category of ingenious concealment. That even though the respondent was a owner and during investigations had produced the purchase invoices and bank statement the fact remained that she was not eligible to bring gold as she was a foreign national.

5.3. that the manner in which the gold had been concealed i.e. in the form of silver coated sling made up of crude gold rings attached to her purse showed her criminal bent of mind and a clear intention to evade Customs duty and smuggle it into India.

The applicant has prayed to the Revisionary Authority to set aside the appellate order and to restore the order passed by the original adjudicating authority or pass any order as deemed fit.

6. Personal hearing in the case was scheduled for 03.09.2019. Subsequent, to the change of the revisionary authority, personal hearings in the case through the online video conferencing mode was scheduled for 22.10.2021 / 29.10.2021, 02.12.2021 / 08.12.2021 & 16.12.2021. Records indicate that Smt. Pushpa Anchan, Superintendent had appeared on 06.09.2019 on behalf of the applicant. Shri. N.J Heera, Advocate appeared on behalf of the Respondent for physical hearing on 16.12.2021. He furnished a written submission.

6.1. In their written application submitted on 16.12.2021, they have stated that the order passed by the appellate authority is well-reasoned and the justification / rationale for permitting the redemption of the impugned goods is well founded and was based on solid grounds and sound principles of law.

6.2. The reasons for granting redemption of gold has been clearly and rightly expressed in the appellate order.

6.3. For the contravention of Section 77 of the Customs Act, 1962, the appellate authority had imposed fine and penalty.

6.4. They have submitted that for similar cases, the GOI had allowed the release of gold on payment of redemption fine and penalty. Two GOI cases have been cited by the respondent.

6.5. The copies of invoices have been furnished.

6.6. the respondent has cited a bunch of case laws to buttress their case.

(i). Birla Corporation Ltd. v/s. Commissioner of C.Ex, [2005 (186) ELT 266 (SC)],

(ii). Commr. Of C. Ex , Nasik vs. Jain Vanguard Polybutlene Ltd [2005 (1861) ELT 266(SC)],

(iii). Nirma Ltd vs. Commr. Of C.Ex, Nashik, [2012 (276) ELT 283 (Tri-Ahmd)],

(iv). Hargovind Das K Joshi v/s. Collector of Customs [1992 (61) ELT 172 SC],

(v). Vigneswaran Sethuraman vs. UOI [2014 (308) ELT 394 (HC-Kerala)],

(vi). Alfred Menezes v/s. Commissioner of Customs (Mumbai) [2011 (236) ELT 587 (Tri-Mumbai)],

(vii). Collector of Customs v/s. Elephanta Oil and Inds. Ltd [2003(152) ELT 0257 – SC], etc

7. The Government has gone through the facts of the case. The respondent was intercepted at the exit gate after having walked through the green channel. The impugned gold sling was attached to the purse being carried by the respondent. It is clear that the respondent had resorted to an innovative and clever method of concealment to evade duty. By this action, it is clear that respondent had no intention to pay the Customs duty and had planned to hoodwink the authorities. However, goods were not secreted and were in full display. The respondent had not declared the impugned gold as required under Section 77 of the Customs Act, 1962. The confiscation of the gold is therefore justified and thus, the respondent had rendered herself liable for penal action.

8. 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”.

9. 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 ‘respondents’ thus, liable for penalty.

10. Once goods are held to be prohibited, Section 125 still provides discretion to consider release of goods on redemption fine. 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.

11(a). The option to allow the redemption of seized goods is the discretionary power of the adjudicating authority / appellate authority depending on the facts of each case and after examining the merits. In the present case, though the manner of carrying the goods was innovative and clever, but the same was not secreted. Government notes that the appellate authority considering that the respondent was a foreign national and was the owner of the impugned gold, had allowed for its re-export on payment of a redemption fine of Rs. 2,75,000/-. Government finds that redemption of the gold for re-export is in congruity with the ratio of the recent Supreme Court judgement in the case of M/s. Raj Grow Impex and others Vs UOI (CIVIL APPEAL NO(s). 2217-2218 of 2021 arising out of SLP(C) Nos. 14633-14634 of 2020 – Order dated 17.06.2021) wherein at para 97(f) it is held as under;

(f) the subject goods are held liable to absolute confiscation but, in continuity with the order dated 18.03.2021 in these appeals, it is provided that if the importer concerned opts for re-export, within another period of two weeks from today, such a prayer for reexport may be granted by the authorities after recovery of the necessary redemption fine and subject to the importer discharging other statutory obligations. If no such option is exercised within two weeks from today, the goods shall stand confiscated absolutely.

11(b). Thus, taking into account the aforesaid facts of the respondent being a foreign national; owner of the gold and had requested for re-export of the impugned gold, the Government is in agreement with the appellate order for re-export of the impugned gold and does not find it necessary to interfere in the same. The Revision Application is liable to be disallowed.

11(c). The Government finds that quantum of the redemption fine imposed by the appellate authority for the release of the impugned gold for re-export is 18% of the

value of the impugned gold, Government does not find it necessary to interfere in the same.

11(d). The Government finds that the personal penalty of Rs. 1,50,000/- imposed on the Respondent by the original adjudicating authority and upheld by the appellate authority is commensurate with the omissions / commissions committed and does not find it necessary to interfere in the same.

12. In view of the foregoing paras, the Government is not inclined to interfere in the order passed by the appellate authorities.

18. The Revision application is, accordingly, dismissed.

Shrawan
23/2/22
(SHRAWAN KUMAR)

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

ORDER No. 95 /2022-CUS (WZ) /ASRA/ DATED 23.02.2022

To,

1. Commissioner of Customs, Chhatrapati Shivaji International Airport, Terminal - 2, Level - II, Sahar, Andheri (East), Mumbai - 400 099.
2. Ms. Amal Mohamed Ahmed, (Address of respondent not available), C/o. Advani, Sachwani & Heera, Advocates, Nulwala Building, Ground Floor, 41, Mint Road, Opp. GPO, Fort, Mumbai - 400 001. (Only available address in the records).

Copy to:

1. Advani, Sachwani & Heera, Advocates, Nulwala Building, 41 Mint Road, Fort, Opp. G.P.O. Fort, Mumbai 400 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File,
4. File Copy.
5. Notice Board.