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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 12554/2019**

SHADAB ALI KHAN .....Petitioner
Through: Ms. Sangita Bhayana, Adv. (M: 9810026768)

versus

COMMISSIONER OF CUSTOMS .....Respondent
Through: Mr. Akshay Amritanshu, Senior Standing Counsel, CBIC with Ms. Drishti Saraf and Ms. Pragya Upadhyay, Advs. (M: 9931282222)

**CORAM:**
**JUSTICE PRATHIBA M. SINGH**
**JUSTICE DHARMESH SHARMA**

**O R D E R**

% **20.02.2025**

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India *inter alia* seeking to set aside the order dated 4th September, 2018 passed by the Additional Secretary, Government of India in a revision petition challenging the order passed by the Commissioner Appeals. The appeal assails the impugned order only to the extent it imposes the redemption fine and the penalty and to release the goods to the Petitioner subject to payment of customs duty only. The Petitioner alternatively seeks to allow re-export of the goods.

3. The brief background is that the Petitioner is engaged in real estate business in UAE and he had travelled to India in 2014 for his sister's marriage. He was carrying 3157.74 grams of pure gold in the

form of bars and biscuits.

4. It is the admitted position that upon arrival the Petitioner had reported at the red channel and declared the goods. However, the gold was detained on the ground that it was beyond the permissible limits under the Baggage Rules, 2016 and that customs duty would be liable to be paid.

5. The Petitioner is said to have repeatedly approached the authorities seeking release of the goods and had given an undertaking that he would re-export the goods. Even this fact is noted in the impugned orders. However, in the Order-in-Original dated 24th March, 2015, absolute confiscation was ordered along with the penalty of Rs. 10,00,000/-.

6. The Petitioner preferred an appeal before the Commissioner (Appeals) after depositing 7.5 % of the penalty amount. The said appeal was also dismissed.

7. Finally, a revision was preferred by the Petitioner under Section 129 DD of the Customs Act, 1962, in which the order of the Commissioner (Appeals) was modified in the following terms:

> *"In fact the Commissioner (Appeals), Delhi and the Government of India have consistently held the same view in a large number of cases that gold is not prohibited goods, as it is not specifically notified by the Government. For example the same Commissioner (Appeals), in his Order-in-Appeal No. CC(A)Cus/D-I/Air/629/2016 dated 14.07.2016 in the case of Mohd. Khalid Siddique, has categorically held that gold is not prohibited goods.* ***Therefore, the Commissioner (Appeals) has taken a totally different stand by upholding absolute***

***confiscation of gold in this case. Accordingly the Commissioner (Appeals) should have provided an option to the applicant-under Section 125 of the Customs Act, 1962 to redeem the confiscated gold on payment of customs duties, redemption fine and penalty and because it was not done so earlier, the Government now allows the applicant to redeem the confiscated gold within 30 days of this order on payment of customs duty. Redemption fine of Rs.-31,00,000/-(thirty one lakhs) and penalty of Rs.7,00,000/-(Seven Lakhs). The Government considers this penalty quite reasonable and appropriate in the context of the present case by considering the fact that the applicant had declared the gold honestly to the Custom Officers at his arrival.***

*6. In terms of the above discussion, the order-in-appeal Is modified and the revision application is allowed to the above extent."*

8. It is this order that is challenged in the present petition. Ms. Bhayana, ld. Counsel appearing for the Petitioner submits that there was no violation by the Petitioner inasmuch as he has *bona fidely* declared the same to the authorities upon arrival itself.

9. Ld. Counsel for the Petitioner contends that Section 80 of the Customs Act, 1962, expressly allows the return of goods to a passenger upon their departure from India, provided that the passenger had:

(1) requested for its return and;

(2) made a truthful declaration at the time of arrival.

For ease of reference, Section 80 of the Customs Act, 1962 reads as under:

***"80. Temporary detention of baggage.—Where the baggage of a passenger contains any article which is***

***dutiable or the import of which is prohibited and in respect of which a true declaration has been made under section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India*** *1[and if for any reason, the passenger is not able to collect the article at the time of his leaving India, the article may be returned to him through any other passenger authorised by him and leaving India or as cargo consigned in his name]."*

10. Mr. Akshay Amritanshu, ld. Counsel for the Respondent submits that considering the quantity of gold, duty ought to be paid.

11. Heard. Clearly, in the present case, the gold which has been seized is of a substantial quantity of 3157.74 gms, and the Petitioner, as mentioned above, seeks for release seized goods subject to payment of customs duty only primarily on the ground of *bona fide* declaration made under Section 77 of the Customs Act. The Petitioner alternatively prays for re-export. The Delhi High Court in ***Jasvir Kaur v. Union of India*; *1991 SCC OnLine Del 625*** in a similar circumstance dealing with a prayer to re-export observed as under

> ***9. We have no manner of doubt that re-export cannot be asked for as of right****. If the Customs authorities have come to the conclusion, as they did in the present case, that the intention of bringing an article of high value is to dispose it of in India or is in an attempt to smuggle the same into India then the question of re-export cannot arise when that article is recovered from the passenger.* ***The passenger cannot be given a chance to try his luck and smuggle Gold into the country and if caught he should be given permission to re-export.*** *That is not the intention of Rule 3 or Rule 7 of the Tourist Baggage Rules. It is the genuine personal jewellery which alone is permitted to be brought*

*into the country and which must be re-exported. "Wherever the Customs authorities find that in the garb of personal items goods are sought to be smuggled or brought into the country without the authority of law then there is every right with the Government to confiscate the same**. For good and valid reason re-export may be allowed but it cannot be claimed as of right**."*

A perusal of the above shows that even though prayer to re-export cannot be claimed as a matter of right, it can be granted if good and valid reasons as to the *bona fides* of Petitioner are shown.

12. The relevant provision that facilitates re-export of the goods imported, in our case, is Section 80 of the Customs Act. Various High Courts have consistently held that a declaration under Section 77 of the Customs Act, demonstrating *bona fides*, is a mandatory prerequisite for re-exporting dutiable goods under Section 80. The Allahabad High Court in ***Commissioner, Customs (Preventive) vs Deepak Bajaj***;***2018 SCC OnLine All 5754*** has observed as under:

> *"**9.** Section 80 of the Act provides for temporary detention of baggage. It reads as under:—*
> *80. Temporary detention of baggage:—*
>
> ******** ********** *********
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> ***10.** The aforesaid provision contemplates for making a declaration under Section 77 of the Act in respect of the articles which are dutiable or the import of which is prohibited to enable the proper officer to detain such articles for being returned to the passenger on his leaving India.*
> ***11. A simple reading of the aforesaid provision makes it abundantly clear that the benefit of Section 80 of the Act for return of the detained articles to the passenger at the time of leaving India would only be available to him if in respect of dutiable article or the import of***

***which is prohibited a declaration is made by him under Section 77 of the Act. Therefore, making of a declaration under Section 77 of the Act by the person whose baggage contains the dutiable articles or the import of which is prohibited is mandatory for the purposes of returning articles so contained therein***.*"*

13. In the present case the Petitioner had *bona fidely* declared the same under Section 77 of the Act by coming through the red channel. The only dispute concerning the import pertained to the quantity of gold brought, in which, due to its substantial volume, did not qualify for exemption under Para 2.26 of the Foreign Trade Policy, which permits passengers to import *bona fide* household goods and personal effects in their baggage. However, the Petitioner, upon being informed about the violation, had repeatedly made requests for re-export from the initial stages as can be seen from the Order-in-Original dated 24th March, 2015 which records as under:

> *"2.2 The Pax approached to get release of his detained goods and submitted a letter dated 16.03.2015 wherein he has stated that he was a Real Estate agent in Dubai and the detained gold bars were brought by him for the marriage of her sister; that the said Invoice bearing no. 14150 dated 24.09.2014 in support of his claim.* ***The pax requested that his detained goods may be allowed Re-export and submitted that he did not want any show cause notice in the matter and his case may be decided on priority. He was prepared to pay fine and penalty***.*"*

14. Under such circumstances, this Court is of the opinion that the Petitioner has made a fit case for re-export. The Court agrees with the Revisional Authority's holding that gold is not a prohibited good and

absolute confiscation was completely unwarranted. However, the Revisional Authority has also gone ahead and imposed a redemption fine and a penalty coupled with the payment of the customs duty without providing an option to re-export.

15. This, according to the Court, would be too heavy a burden on the Petitioner considering the facts and circumstances of this case. Accordingly, keeping in view the rationale behind Section 80 of the Customs Act, 1962, it is directed that the gold ought to be released to the Petitioner for re-export, subject to:

(i) payment of redemption fine of Rs.31,00,000/- and;

(ii) penalty of Rs.7,00,000/- respectively.

16. Since the goods have been permitted to be re-exported, no customs duty would be liable to be paid. Further the amount of 7.5% which was deposited by the Petitioner for filing the appeal shall also be adjusted against the Penalty and fine imposed.

17. Let the goods be released to the Petitioner personally within four weeks from the release of this order subject to his payment of the fine and the penalty for the purposes of re-export.

18. The petition is disposed of in the aforesaid terms. Pending applications, if any, are also disposed of.

**PRATHIBA M. SINGH, J.**

**DHARMESH SHARMA, J.**

**FEBRUARY 20, 2025/***gunn/Am*