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SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No. 371/201/B/2021-RA/2021

Date of Issue 01.01.2024

ORDER No *01*/2024-CUS (WZ)/ASRA/MUMBAI DATED 05 01 2024. 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 · Ms. Umme Barida

Respondent Pr Commissioner of Customs, C S.I Airport, Mumbai

Subject Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No MUM-CUSTOM-PAX-APP-642/2018-19 dated 25 10.2018 [Date of issue, 25 10 2018] [F No S/49-320/2016-17] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III

**ORDER**

This Revision Application has been filed by Ms Ummu Barida (herein referred to as 'Applicant') against the Order-in-Appeal No MUM-CUSTOM-PAX-APP-642/2018-19 dated 25 10 2018 [Date of issue 25 10 2018] [F No S/49-320/2016-17] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III

2 Brief facts of the case are that the Applicant, who had arrived from Dubai, was found in possession of 13 gold bars weighing 1515 grams and valued at Rs 39,91,737/- which was seized under the reasonable belief that the same was being smuggled into India and hence liable to confiscation under the provisions of the Customs Act, 1962. The Applicant admitted to ownership, possession, non-declaration, concealment and recovery of the seized gold

3 After following the due process of law, the Original Adjudicating Authority (OAA) viz. Additional Commissioner of Customs, Chhatrapati Shivaji International (C.S I) Airport, Mumbai vide Order-In-Original No ADC/RR/ADJN/031/2016-17 dated 24 04 2018 ordered confiscation of the said 13 gold bars weighing 1515 grams and valued at Rs 39,91,737/- under Section 111 (d), (l), and (m) of the Customs Act, 1962. The OAA gave the Applicant the option to redeem the said seized gold under Section 125 of the Customs Act, 1962 on payment of redemption fine of Rs 7,00,000/- in lieu of confiscation in addition to payment of the applicable customs duty. Personal penalty of Rs 4,00,000/- was imposed on the Applicant under Section 112(a) and (b) of the Customs Act, 1962

4 Aggrieved by this order, the Respondent Dept filed an appeal with the Appellate Authority viz, Commissioner of Customs (Appeals), Mumbai Zone-III, who vide her Order-in-Appeal No MUM-CUSTOM-PAX-APP-642/2018-19 dated 25 10 2018 [Date of issue 25 10 2018] [F No S/49-320/2016-17] upheld the confiscation of the impugned gold and the personal penalty imposed by the OAA in the Order-in-Original

5 Aggrieved with the above order, the Applicants have filed this revision application. The grounds of revision therein are as under,

5.1 That the impugned order passed by the Respondent is bad in law,

5.2 That the order has been passed without giving due consideration to the documents on record and the facts of the case

5.3 That the dutiable goods brought by the applicant are neither restricted nor prohibited

5.4 That this the first time that she has brought this type of goods and there is no previous case registered against her

5.5 That the redemption has to be imposed to the extent of the difference between CIF and market value to wipe out the margin of profit

5.6 Under the circumstances of the case, the applicants have prayed to the Revision Authority to set aside the redemption fine and reduce the penalty substantially or pass any order as deemed fit. The Applicant also filed an application for condonation of delay. The Applicant also filed an application for condonation of delay.

6 Personal hearing in the case was scheduled on 18.08.2023. Shri. N. J. Heera, Advocate appeared for the personal hearing on 18.08.2023 and submitted that the brought some gold for personal use. He requested to reduce fine and penalty. Nobody appeared for the respondent.

7 At the outset, the Government notes that the Applicant has filed for condonation of delay. The Revision Application was filed on 21.06.2021. The date of issue of the Order of the Appellate Authority is 25.10.2018. Based on the date of issue of the said Order of the Appellate Authority, the Applicant was required to file the Revision Application by 24.01.2019 (i.e. taking the first 3 months into consideration) and by 24.04.2019 (i.e. taking into consideration a further extension period of 3 months). The Applicant has accepted that there was a delay in filing the Revision Application from the date of receipt of the order. Thus it is seen that the Revision Application has been filed beyond the date, after considering the extended period.

7.2 The Applicant in his application for condonation of delay has stated that the revision application could not be filed due to reasons beyond the Applicants control and requested that the delay be condoned.

7.3 For understanding the relevant legal provisions, the relevant section is reproduced below.

**SECTION 129DD. Revision by Central Government.-**

*(1) The Central Government may, on the application of any person aggrieved by any order passed under section 128A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 129A, annul or modify such order*

*(2) An application under sub-section (1) shall be made within three months from the date of the communication to the Applicant of the order against which the application is being made*

*Provided that the Central Government may, if it is satisfied that the Applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months*

7.4 From above it is clear that the Applicant was required to file the Revision Application within 3 months from the communication of the Appellate Order. The delay thereafter, upto 3 months can be condoned. Since, the Revision Application is filed beyond the condonation period of three months, Government rejects the application on delay on the part of the Applicant in filing the application without examining the case on merits.

8. Government has gone through the facts of the case. The Government notes that the Applicant had not declared the gold and had opted for the green channel. Applicant had admitted that she had not declared the gold. A declaration as required under section 77 of the Customs Act, 1962 was not submitted and therefore, the confiscation of the gold was justified.

9. Government observes that the OAA had allowed the redemption of the impugned gold on payment of a fine of Rs 7,00,000/- and penalty of Rs 4,00,000/- was imposed on the applicant under Section 112(a) & (b) of the Customs Act, 1962 by OIO had been upheld by the AA in appeal filed by the Dept. Before me the Applicant has contended that redemption fine may be set aside and the personal penalty may be reduced. The Respondent-Dept has not filed any appeal.

10. In view of the foregoing paras, the Government finds that as the applicant had not declared the gold bars at the time of arrival, the confiscation of the gold

bars was justified. The redemption fine imposed on the applicant by the OAA is Rs 7,00,000/- Government finds that the redemption fine is legal and proper.

11 The applicant had kept the gold bar in artificial pockets stitched in her innerwear. Government notes that at times travellers resort to hiding their valuable possession out of safety concerns. The fact remains that the applicant had not declared the gold and hence, the same was rightly confiscated and applicant had made herself liable to penal action.

12 Government finds that the penalty of Rs.4,00,000/- has been imposed on the applicant under Section 112(a) and (b) of the Customs Act, 1962. The Government notes that the appellate authority has upheld the penalty imposed by the adjudicating authority under Section 112 (a) and (b) of the Customs Act, 1962. The Government is in agreement with the quantum of penalty imposed on the applicant. It is commensurate with the omissions and commissions committed.

13 The order of the Appellate authority is therefore liable to be upheld in its entirety. Government finds that the Order of Appellate Authority has been accepted by the Department as the same has not been challenged.

14 Accordingly, Government upholds the Appellate Order. The revision application filed by the applicant is decided on the above terms.

  
( SHRAWAN KUMAR )

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

ORDER No            01/2024-CUS (WZ)/ASRA/MUMBAI DATED 05/01/2024

To

- 1 Ms Umme Barida,  
c/o Shri N J Heera, Advocate, Nulwala Building, Ground Floor, 41, Mint Road, Opp GPO, Fort, Mumbai 400001
- 2 The Pr Commissioner of Customs, Chhatrapati Shivaji International Airport, Terminal 2, Level-II, Sahar, Andheri (East), Mumbai 400 099

Copy to

- 1 The Commissioner of Customs (Appeals), Mumbai-III, Awas Corporate Point, 5<sup>th</sup> Floor, Makwana Lane, Behind S M Centre Ancheri-Kurla Road, Marol. Mumbai - 400 059
- 2 Shri N J Heera, Advocate, Nulwala Building, Ground Floor, 41, Mint Road, Opp GPO, Fort, Mumbai 400001
- 3 Sr P S. to AS (RA), Mumbai
- 4 File Copy
- 5 Notice board