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GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No. 371/03/B/15-RA /4839 Date of Issue 04.11.19

ORDER NO.09/2019-CUS (WZ) / ASRA / MUMBAI/ DATED20.09.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Mohammed Ansar Damda

Respondent : Principal Commissioner of Customs (Airport), Mumbai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-337 & 338/14-15 Dated 01.09.2014 passed by the Commissioner of Customs (Appeals), Mumbai – III.

ORDER

This revision application has been filed by Shri Mohammed Ansar Damda, (herein referred to as Applicant) against the Order in Appeal No. MUM-CUSTM-PAX-APP-337 & 338/14-15 Dated 01.09.2014 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. On 27.09.2012 the Applicant arrived at the CSI Airport from Dubai. Acting on intelligence the Officers of AIU intercepted him after he had crossed the green channel. Examination of his person and baggage resulted in the recovery of one Samsung LED TV valued at Rs. 30,000/- , 2 I-phones and 10 pieces of perfumes and one "Romain Jerome" wrist watch totally valued at Rs. 12,28,415/- (Rupees Twelve lacs Twenty eight thousand Four hundred and Fifteen).

3. After due process of the law vide Order-In-Original No. ADC/ML/ADJN/16/2013-14 dated 30.09.2013 the Original Adjudicating Authority allowed the Samsung TV to be cleared under free allowance and ordered confiscation of the other goods viz, 2 I-phones and 10 pieces of perfumes and one "Romain Jerome" wrist watch, under Section 111 (d) (l) and (m) of the Customs Act, 1962 and allowed redemption on payment of Rs. 3,00,000/- under section 125 of the Customs Act,1962 and imposed penalty of Rs. 2,00,000/- under Section 112 (a) of the Customs Act,1962. A penalty of Rs. 20,000/- under Section 114AA was also imposed on the respondent.

4. Aggrieved by the said order, the respondent filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal MUM-CUSTM-PAX-APP-337 & 338/14-15 Dated 01.09.2014, reduced the redemption fine and the penalty imposed to Rs. 2,50,000/- and 1,25,000/- and partially modified the order of the lower adjudicating authority.

5. Aggrieved with the above order the Applicant has filed this revision application inter alia along with a condonation of delay of two weeks on the grounds that;

5.1 The Applicant is a NRI and resides abroad and frequently travels to India therefore could not file the revision application on time and refusing to condone the delay may result in a meritorious matter being thrown out

and the cause of justice defeated; The Order of the Commissioner (Appeals) is bad in law and unjust and without giving due consideration to the documents on record; neither legal nor proper; The goods were not brought for sale; The goods are neither prohibited nor restricted; The Applicant was not aware of the customs rules and violations; The Applicant had brought the goods for the first time; In similar type of cases the goods were allowed to be re-exported;

5.2 The Revision Applicant cited decisions in favor of their case and prayed for setting aside the order of the Appellate authority and the order to re-export may be allowed.

6. A personal hearing in the case was held on 28.08.2019. Shri N. J. Heera, Advocate for the Applicant attended the hearing, he re-iterated the submissions filed in Revision Application and pleaded for re-export and cited the decisions of GOI/Tribunals. Shri A.C. Das Asst. Commissioner and Shri R. P. Gangwani Supdt, on behalf of the department contested that the request may be considered under section 77 of the Customs Act, 1962.

7. The Government has gone through the facts of the case. In the interest of justice, the delay in filing the revision application being within condonable limits is condoned and the Application is taken up on the merits of the case. A proper written declaration of impugned goods was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and the Applicant preferred to use the facility of the green channel inspite of having dutiable goods, under the circumstances confiscation of the wrist watch is justified.

8. However, the facts of the case state that the wrist watch and the impugned I-phones were carried by the applicant in his pant pockets and it was not ingeniously concealed. Import of watches is restricted not prohibited. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised and re-export permitted. In view of the above facts, the Government is of the opinion that though confiscation of the wrist watch is justified a lenient view can be taken in the matter for re-export as the intent to not export has not been established by the department. As the Applicant has

pleaded for re-export, the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified to that extant.

9. The Government allows redemption of the seized items for re-export on payment of redemption fine under section 125 of the Customs Act,1962 and penalty under section 112(a) of the Customs Act,1962 imposed, as per the order in original dated 30.09.2013. Government however observes that once penalty has been imposed under section 112(a) there is no necessity of imposing penalty under section 114AA. The penalty of Rs. 20,000/- (Rupees Twenty thousand) imposed under section 114AA of the Customs Act,1962 is set aside.

10. Revision application is partly allowed on above terms.

11. So, ordered.

(SEEMA ARORA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No.09/2019-CUS (WZ) /ASRA/ DATED20.09.2019

To,

1. The Principal Commissioner of Customs (Airport),
   Chatrapati Shivaji International Airport,
   Terminal -2, Mumbai.
2. Shri Mohammed Ansar Damda
   C/o Shri N. J. Heera, Advocate,
   Nulwala Building,41, Mint Road,
   Fort, Mumbai - 400 001.

Copy to:

1. The Commissioner of Customs (Appeals), Mumbai-III
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.