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SPEED POST

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

F.No. 371/67/B/14-RA

2883

Date of Issue

28/05/21

ORDER NO. 12/2021-CUS (WZ)/ASRA/MUMBAI DATED 30<sup>th</sup> 04.2021 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 Edmund Liley

Respondent : Commissioner of Customs, (Airport), Goa.

Subject : Revision Application filed, under Section 129DD of the  
 Customs Act, 1962 against the Order-in-Appeal No. GOA-  
 EXCUS-000-APP-045/13-14 dated 13.08.2014 passed by  
 the Commissioner (Appeals), Central Excise, Customs &  
 Service Tax, Goa.

ORDER

This revision application has been filed by Shri Edmund Liley (herein after referred to as the Applicant) against the Order in appeal No. Order-in-Appeal No. GOA-EXCUS-000-APP-045/13-14 dated 13.08.2014 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Goa.

2. Briefly stated the facts of the case are that the Applicant, Shri Edmund Liley a British citizen along with Smt. Marina Angela Michael were intercepted by the officers of Customs in the departure hall, after they had completed immigration formalities, and awaiting their flight to Dubai. He was asked whether he had anything to declare and he replied in the negative. Not being satisfied with his answer an examination of his baggage was carried out which resulted in the recovery of gold jewelry, totally valued at Rs. 46,17,058/- ( Rupees Forty six lakhs Seventeen Thousand and Fifty eight ).

3. The Original Adjudicating Authority vide Order-In-Original No. 06/2013-ADC dated 16.07.2013 ordered absolute confiscation of the impugned gold jewelry, and imposed penalty of Rs. 4,00,000/- ( Rupees Four lakhs ) under section 114 and a penalty of Rs. 5,50,000/- ( Rupees Five lakhs Fifty thousand ) under section 114AA of the Customs Act, 1962 on Applicant.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. GOA-EXCUS-000-APP-045/13-14 dated 13.08.2014 set aside absolute confiscation and allowed the gold jewelry to be redeemed on payment of redemption fine of Rs. 9,00,000/- ( Rupees Nine lakhs ) and reduced the penalty to Rs. 2,00,000/- ( Rupees Two lakhs ) under section 114 and a penalty of Rs. 2,50,000/- ( Rupees Two lakhs Fifty thousand ) under section 114AA of the Customs Act, 1962 on Applicant and modified the Order of the Original adjudicating authority.

5. Aggrieved with the above order the Applicant has filed this revision application inter alia on the grounds that;

5.1 The Applicant submits that the findings and order passed by the Respondent are contrary to the law and evidence on record.

5.2 The Applicant submits that the findings and order passed by the Ld. Respondent are bad in law, illegal, unjust and unfair.

5.3 The Applicant submits that the impugned order reflects a total bias against the Applicant on the part of the Ld. Respondent.

5.4 The Applicant submits that the Applicant is the owner of the impugned goods and the Applicant is claiming the impugned goods.

5.5 The Applicant submits that the Ld. Respondent ought to have appreciated that the impugned goods (i.e. gold jewellery valued at Rs. 46,17,058/-) are lying with the Department and there is no element of duty to be recovered and therefore, the Revenue is secured and therefore, insistence on pre-deposit of penalty amount demanded, prior to hearing of the Appeal was uncalled for and the same had caused undue hardship to the Applicant and the same had resulted in denial of right of appeal to the Applicant. The Applicant submits that the Applicant craves leave to refer to and rely upon certain orders where pre-deposit of penalty amount demanded has not been insisted in similar circumstances.

5.6 The Applicant submits that Your Lordship may kindly appreciate that this Hon'ble Revisionary Authority has never insisted on pre-deposit prior to hearing of Revision Applications in such cases where Revenue is secured to hearing of Revision Applications in such cases where Revenue is secured.

5.7 The Applicant submits that the impugned goods (i.e. gold jewellery) is not in the category of prohibited goods, but are restricted goods and therefore, option of redemption ought to have been given.

5.8 Your Lordship may kindly appreciate that the Ld. Adjudicating Authority even though has opined favourably with the case of the Appellant has imposed heavy redemption fine and penalty, and on this ground alone the said order needs to be set aside.

5.9 The Applicant humbly prays that the heavy imposition of redemption fine of Rs. 9,00,000/- under section 125 be set aside and the gold jewelry be allowed to be redeemed on token redemption fine.

5.10 The order of imposition of penalty under section 114 and 114AA under the Customs Act, 1962 of Rs. 2,00,000/- and Rs. 2,50,000/- be set aside.

6. Personal hearings in the case were scheduled on 28.03.2018, 24.05.2018 and 23.08.2018, nobody neither the Applicant nor the Department attended the said hearing. Due to change in the Revisionary authority a hearing was again scheduled on 19.03.2021 Shri N. J. Heera, Advocate attended the said hearing and reiterated the submissions already made. He submitted that the gold jewelry being taken abroad was their personal effects and therefore requested to release the same unconditionally without any redemption fine and penalty.

7. The Government has gone through the facts of the case, The officers of Customs on examination of the Applicants baggage recovered gold jewelry valued at Rs. 46,17,058/- ( Rupees Forty six lakhs Seventeen Thousand and Fifty eight ). The facts regarding the interception and subsequent detection are not in dispute. The respondent did not file any declaration as required under section 77 of the Customs Act, 1962 the confiscation of the gold is therefore justified.

8. The Appellate authority in its order dated 13.08.2014 notes in para 7 that "*Thus the said gold jewelry, which was not declared to the customs by the Appellant at the time of departure, was being taken out of India, i.e. being exported. At the outset I have noticed that neither any Customs duty is payable when gold jewelry is exported from India nor is there any prohibition/restriction on the same. Thus, it is established that the Appellant was neither trying to evade any customs duty by taking the said gold jewellery out of India nor was he violating any prohibition / restriction. Further, it is a fact that the Appellant has been visiting India and staying in Goa for long periods of time and has even a bank account in HDFC Bank in Goa. During investigations, the Appellant had explained that around half of the said assorted gold jewellery was purchased by him and his partner, Mrs. Marina Angela Michael, who was also travelling with the Appellant at the time of detention / seizure of the said gold jewellery; that a*

*part of the said jewellery belonged to Mrs. Marina Angela Michael and the same was gifted to her by her mother; that a part of the said jewellery was purchased by them (Appellant and Mrs. Marina Angela Michael) in England, Barbados, Spain, Italy, Cuba and America. Thus, from the facts as recorded in the Order-n-Original, it appears that the two passengers, viz. Mr. Edmund Liley and Mrs. Marina Angela Michael were owners of the said jewellery. Investigations have not indicated in any manner that the said gold jewellery did not belong to them. I find that only the Appellant's failure to not declare the said gold jewellery to the Customs Officers at the time of departure from India, has rendered the said gold jewellery liable to confiscation under the CA, 1962. The Appellant is not contested to the said liability to confiscation and has only requested for allowing its re-export. I find that gold jewellery is not a prohibited item for export and therefore its absolute confiscation is not warranted. Even in the case of import of gold jewellery by passengers as part of their baggage, without declaring the same to Customs on arrival, as per the prevailing practice the same is released on payment of redemption fine, in lieu of confiscation. This has also been ordered in a number of cases by Hon'ble Courts/ CESTAT. The present case being a case of export, deserves to be treated more leniently than the cases of import of gold jewellery."*

9. Government fully agrees with the observations of the Appellate authority as stated above. The only misdemeanor of the Applicants is that they have not filed a declaration as required under section 77 of the Customs Act, 1962. However when there is no question of Customs duty evasion, and when there is no prohibition/restrictions for the export of gold. Redemption fine and penalties imposed cannot be on the same terms as that when gold is under import as there is no question of duty evasion in export of gold jewelry. Government therefore observes that in view of the fact there is no duty evasion in export of gold a reasonable view in the matter is warranted. The Applicants are the owners of the gold and there does not appear to be any malafide intention in the attempted export. The redemption fine is therefore liable to be reduced. Government notes that penalty has been imposed under section 114 as well as 114AA, two penalties cannot be imposed for the same offence. When penalty has already been imposed under section 114 there is no necessity of imposing a second penalty under section 114AA. The Appellate order is therefore required to be modified to that extent.

10. The redemption fine of Rs. 9,00,000/- (Rupees Nine lakhs ) is reduced to Rs. 6,00,000/- (Rupees Six Lakhs). The penalty of Rs. 2,50,000/- (Rupees Two lakhs Fifty Thousand) imposed under section 114 is reasonable. The penalty of Rs. 2,50,000/- (Rupees Two lakhs Fifty Thousand) under section 114AA of the Customs Act, 1962 is set aside.

11. The Revision Application is disposed on above terms.

*Shrawan*  
80/4/21  
( SHRAWAN KUMAR )

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

ORDER No. 12/2021-CUS (WZ) /ASRA/

DATED 30.04.2021

To,

1. Mr. Edmund Liley, N-3, Marriners Quay, Brighton Marina Village, BNZ, 5UZ England, U.K.
2. Mr. Edmund Liley, Flat No. BF-3, Sunpark, Khobra Vaddo, Calangute-403516.
3. The Commissioner of Customs, Goa.

Copy to:

4. Shri N. J. Heera, Advocate, Nulwala Building, 41 Mint Road, Fort, Mumbai 400 001.
5. Sr. P.S. to AS (RA), Mumbai.
6. Guard File.
7. Spare Copy.