

REGISTERED
SPEED POST



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

F.No. 371/11-A/B/16-RA

3140

Date of Issue 25.06.2021

ORDER NO. 140/2021-CUS (SZ)/ASRA/MUMBAI DATED 07.06.2021 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 Mohammed Gulfam

Respondent : Commissioner of Customs, Ahmedabad.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. AHM-CUSTOM-000-APP-066-16-17 dated 03.01.2017 passed by the Commissioner of Customs (Appeals), Ahmedabad.

ORDER

This revision application has been filed by the Shri Mohamed Gulfam (herein referred to as Applicant) against the order No. AHM-CUSTM-000-APP-066-16-17 dated 03.01.2017 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Mohammed Gulfam at the SVP International airport as he was a frequent flyer and had opted for the green channel. When he passed by the door frame metal detector it beeped signalling metal concealment and therefore he was diverted for detailed scrutiny. The examination of his person resulted in the recovery of two gold bars totally weighing 91.470 gms and valued at Rs. 2,25,930/-) Rupees Two lakhs Twenty five thousand Nine hundred and Thirty).

3. After due process of the law vide Order-In-Original No. 54/AC-AKC/AIU/HQ/2015 dated 29.10.2015 the Original Adjudicating Authority confiscated the gold absolutely and imposed a penalty of Rs. 1,50,000/- (Rupees One lakh fifty thousand) was imposed under section 112 a & b of the Customs Act, 1962 on the Applicant. A penalty of Rs. 50,000/- (Rupees Fifty thousand)was also imposed under section 114AA of the Customs Act, 1962 on the Applicant..

4. Aggrieved by this order the Respondents filed an appeal with the Commissioner of Customs (Appeals), The Commissioner (Appeals) vide his order AHM-CUSTM-000-APP-066-16-17 dated 03.01.2017 rejected the Appeal.

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

5.1 The Ld. Commissioner of Customs (Appeals) failed to appreciate that the appellant did declare verbally the gold bars in question before the concerned custom officers when he was questioned. However, the appellant was falsely implicated in the above mentioned case due to some

altercation with the custom officers. Therefore, on this ground alone the impugned order is liable to be set aside.

5.2 The appellant had brought the gold bars from Bangkok after taking loan from his friends and relatives. The appellant did give the receipt for the purchase of gold bars to the custom officer who tore the same. Therefore, on this ground alone the impugned order is liable to be set aside.

5.3 The Commissioner of Customs (Appeals) erred while imposing such a heavy penalty amount of Rs.2,00,000/- on the appellant and not releasing the gold bars of the appellant unconditionally or on payment of redemption fine and penalty. The appellant had brought the gold bars in question after taking loan from his friends and relatives in Bangkok for the marriage of his daughter. It is submitted that the future of the daughter of the appellant will be ruined in case the gold bars are not released as the marriage of the daughter of the appellant cannot take place till the gold bars are released by this Hon'ble Court. It is submitted that the appellant is not in a position to deposit such a heavy penalty amount of Rs.2,00,000/- due to his poor financial condition and family responsibility. Therefore, on this ground the impugned order is liable to be set aside. The appellant had brought the gold bars in question for the marriage of his daughter.

5.4 The Id. Additional Commissioner of Customs, erred while not releasing the gold bars of the appellant in view of the recent judgement of the Hon'ble High Court of Mumbai in the case of Union of India Vs. Dhanak M. Ramji [2009 (248) ELT 127 Bombay] in which the gold was released as the applicant claimed to be the owner of the gold and no other person claimed title thereof. The Hon'ble High Court held that the gold was not prohibited item but became prohibited due to breach of law by the passenger. This order has been upheld by the Hon'ble Supreme Court of India while disposing S.L.P. filed by the department in the case. This particular judgement was followed by the Addl. Commissioner of Customs, IGI Airport, Terminal-3, New Delhi, in the case of Paramjit Singh, wherein the gold of Paramjit was released on payment of penalty, redemption fine and duty. The copy of the judgement of

the Hon'ble Supreme Court of India upholding the judgement of Hon'ble High Court of Mumbai are annexed herewith.

5.5 Therefore, in view of the latest judgement as mentioned above of the Hon'ble Supreme Court of India the gold bars of the appellant should have been released by the Commissioner of Customs (Appeals). Therefore, on this ground also the impugned order is liable to be set aside.

8. Accordingly personal hearings in the case were held on 26.02.2021. Shri Rahul Raheja, Advocate appeared online on behalf of the Applicant. He reiterated the submissions in the Revision applications and requested that the goods may be allowed to be redeemed. Nobody attended the hearing on behalf of the Respondent.

9. Government notes that the Applicant was intercepted on his being a frequent flyer, when he was made to pass the door frame metal detector it beeped signaling metal concealment and therefore he was diverted for detailed scrutiny, which resulted in his confession of having two gold bars. As the Applicant did not declare the gold as required under section 77 of the Customs Act, inspite of being a frequent flyer and was aware of these procedures and therefore confiscation of the gold is justified.

10. Government however notes that the Applicant himself revealed carrying the gold bars, albeit after passing the metal scanner. There is no allegation that the gold biscuits were ingeniously concealed. The quantity of gold under import is small and weighs 91.470 gms. There are no allegations that the Applicant is a habitual offender and was involved in similar offences earlier inspite of being a frequent flyer. Ownership of the gold is not disputed. The facts of the case indicate that it is a case of non declaration of gold, rather than a case of smuggling for commercial considerations. Government also notes that the seriousness of the misdemeanor is required to be kept in mind when imposing penal liabilities. The value of the impugned two gold bars Rs. 2,25,930/-. The Original Adjudicating Authority confiscated the gold absolutely and imposed a penalty of Rs. 1,50,000/- (Rupees One lakh fifty thousand) was imposed under section 112 a & b and penalty of Rs. 50,000/- under section 114AA of the Customs Act, 1962 on the Applicant. Government notes that the absolute confiscation of the impugned gold bars to be harsh, over and above the penalties imposed is 80% of the value of the impugned

gold bars which is unjustified. There are a catena of judgements of higher courts wherein redemption of such gold under section 125 of the Customs Act, 1962, on suitable redemption fine has been justified. Under the circumstances the impugned Appellate order is liable to be set aside.

11. The Appellate order No. AHM-CUSTOM-000-APP-066-16-17 dated 03.01.2017 is therefore set aside. The impugned gold Rs. 2,25,930/- is allowed redemption on payment of Rs.75,000/- (Rupees Seventy Five thousand) as redemption fine. Government opines a reasonable reduction ^{in penalty} is also due in the interest of justice. The penalty of Rs. 1,50,000/- is reduced to Rs.50,000/- (Rupees Fifty thousand). Government observes that once penalty has been imposed under section 112(a) and (b) there is no necessity of imposing penalty under section 114AA, the penalty of Rs. 50,000/- (Rupees Fifty thousand) imposed under section 114AA of the Customs Act, 1962 is set aside.

13. Revision application is disposed of accordingly.

Shrawan
7/6/21

(SHRAWAN KUMAR)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. ~~140~~/2021-CUS (SZ) /ASRA/

DATED 07.06.2021

To,

1. Shri Mohammed Gulfam, S/o Mohd. Zaki House, No. 2124, Gali Saeedkhka, Pahari Bhojla, Turkman Gate, Delhi 110006.
2. The Commissioner of Customs, 7th floor, Mridual Tower, B/H, Times of India, Ashram Road, Ahmedabad - 380 009.

Copy to:

1. Smt. Sangita Bhayana, Advocate, Ch. No. 707, LCB-III High Court of Delhi, New Delhi 110 003.Sr. P.S. to AS (RA), Mumbai.
2. Guard File.
3. Spare Copy.