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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. 371/12/B/WZ/2019-RA /640 : Date of Issue 01.02.2023

ORDER NO. 145/2023-CUS (WZ)/ASRA/MUMBAI DATED 30.01.2023
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.

F.No. 371/12/B/WZ/2019-RA

Applicant : Shri. Rafeeqe M B Mohammed

Respondent : Pr. Commissioner of Customs, CSMI Airport, Mumbai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal Nos.
MUM-CUSTM-PAX-APP-560/2018-19 dated 25.09.2018
issued on 25.09.2018 through F.No. S/49-10/2017/AP
passed by the Commissioner of Customs (Appeals),
Mumbai – III.

ORDER

This revision application has been filed by Shri. Rafeeque M B Mohammed (herein referred to as Applicant) against the Order in Appeal Nos. MUM-CUSTM-PAX-APP-560/2018-19 dated 25.09.2018 issued on 25.09.2018 through F.No. S/49-10/2017/AP passed by the Commissioner of Customs (Appeals), Mumbai – III

2. Briefly stated the facts of the case are that the applicant was intercepted on 06.06.2015 by the Customs Officers at the domestic arrival terminal 1B, Mumbai where he had arrived from Mangalore by Jet Airways Flight No. 9W-346/06.06.2015. To query whether he was in possession of any prohibited / restricted goods or gold in his baggage or person, the applicant had replied in the negative. Examination of his baggage led to the recovery of 6 gold bars of 10 tolas each which had been kept hidden at the bottom of his backpack beneath his clothes. The 6 gold bars having marking 999.0, totally weighed 699 grams, were valued at Rs. 17,42,520/-. Applicant was instructed to board the said flight and retrieve the gold bars which had been kept stuck behind seat no. 26D. The applicant admitted to carriage, non-declaration, and recovery of the 6 gold bars from him.

3. The Original Adjudicating Authority (OAA) viz, Addl. Commissioner of Customs, Mumbai vide Order-In-Original No. ADC/RR/ADJN/362/2016-17 dated 31.10.2016 issued through F.No. S/14-5-329/2015-16 Adj (SD/INT/AIU/247/2015-AP'C' ordered for the absolute confiscation of the 6 gold bars, totally weighing 699 gms, valued at Rs. 17,42,520/- under Sections 111(d), (l) & (m) of the Customs Act, 1962. A penalty of Rs. 1,75,000/- was imposed on the applicant under Section 112(a) and (b) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant had filed an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai – III who vide his Order-In-Appeal Nos. MUM-CUSTOM-PAX-APP-560/2018-19 dated 25.09.2018 issued on 25.09.2018 through F.No. S/49-10/2017/AP allowed to redeem the impugned six gold bars, totally weighing 699 gms, valued at Rs. 17,42,520- on payment of a redemption fine of Rs. 3,00,000/-. The personal penalty of Rs. 1,75,000/- was sustained.

5. Aggrieved with the above order, the Applicant has filed this revision application. In the Form No. CA-8 they have stated that the relief claimed by them is as per their 'Statement of facts' However, no such statement of facts is found attached. Applicant has filed an application for condonation of delay stating that there was a delay of about 50 days.

6. Personal hearing in the case was scheduled through the online video conferencing mode for 29.09.2022. Shri. N.J Heera, Advocate, appeared for personal hearing on 29.09.2022 and submitted that applicant brought small quantity of gold, it was for personal use and applicant is not a habitual offender. He requested for release of the gold on reasonable fine and penalty.

7. On the issue of condonation of delay, the Government notes that the revision application was filed by the applicant on 22.02.2019. Government notes that applicant has claimed that the OIA dated 25.09.2018 was received by him on 01.10.2018. The statutory period for filing of the revision application which is 3 months from the date of communication ended on 24.12.2018. Thereafter, a further extension / condonable period of 90 days is available to the applicant which would have ended on 24.03.2019. Government observes that the revision

application has been filed within the condonable period. Therefore, Government condones the delay.

8. The Government has gone through the facts of the case. At the outset, the Government notes that the revision application has been filed only on the limited grounds of reduction of redemption fine and penalty. The AA vide the OIA no. MUM-CUSTOM-PAX-APP-560/2018-19 dated 25.09.2018 issued through F.No. S/49-10/2017/AP had allowed the applicant to redeem the 6 gold bars, totally weighing 699 gms on payment of a fine of Rs. 3,00,000/-. The personal penalty of Rs. 1,75,000/- imposed by OAA was sustained by the AA. The respondent has not filed a revision application which indicates that the said OIA has been accepted by the respondent.

9. At para 24 of the OIA the AA has held that '*... Accordingly, keeping in view this fact, I allow redemption of impugned goods on payment of fine of Rs. 3,00,000/- (Rs. Three Lakhs only). I, however, uphold the penalty of Rs. 1,75,000/- (Rs. One lakh seventy five thousand only) imposed on the appellant-passenger. The applicable duty and other charges, if any shall be paid as per Section 125(2) ibid. I hasten to add that in this way the appellant passenger has to pay about 65% of the value of goods on account of redemption fine, penalty and baggage rate of duty and as such there cannot be any bonanza or windfall in exercising the legal course of releasing the offending goods as per Section 125 of the Customs Act, 1962*'.

10. The modus operandi adopted for the smuggling operation i.e. the gold bars had been stuck on the seat no. 26D and the applicant had been instructed to fly in the domestic sector and retrieve the gold bars, indicates that an ingenious method had been adopted to evade the duty and hoodwink the Customs. It also indicates that the applicant was a part of a group / syndicate indulging in such smuggling. Considering the said modus operandi adopted by the applicant, the

Government is in agreement with the AA that a reasonable fine would be a deterrent. Government notes that the AA has applied his discretion, judiciously. Government is not inclined to interfere in the OIA passed by the AA which is legal and proper. The revision application filed by the applicant fails.

11. Accordingly, the revision application filed by the applicant is hereby, dismissed.

Shrawan
30/11/23
(SHRAWAN KUMAR)

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

ORDER NO. 145/2023-CUS (WZ/SZ)/ASRA/MUMBAI DATED 30.01.2023

To,

1. Shri. Rafeeqe M B Mohammed, Jayanagar House, Sullia Post, Dakshina Kannada, Karnataka - 574 239.
2. Pr. Commissioner of Customs, CSI Airport, Terminal - 2, Level - 2, Andheri East, Mumbai - 400 099.

Copy to:

1. Shri. N.J Heera, Advocate, Nulwalla Bldg, Ground Floor, 41, Mint Road, Opp. G.P.O., Fort, Mumbai - 400 001.
2. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.