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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. 371/21-A/B/17-RA

Date of Issue

ORDER NO. 150/2020 CUS (WZ)/ASRA/MUMBAI DATED 31.08.2020 OF THE
GOVERNMENT OF INDIA PASSED BY SHRI SEEMA ARORA, PRINCIPAL
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT
OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Smt. Duriya Saddaf
: Shri Mohammed Kazim Gouse Shingati

Respondent : Commissioner of Customs, Ahmedabad

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. AHD-
CUSTM-000--APP-104-105-16-17 dated 07.03.2017 passed by
the Commissioner of Customs (Appeals), Ahmedabad.

ORDER

This revision application has been filed by Smt. Duriya Saddaf and Shri Mohammed Kazim Gouse Shingati (herein after referred to as the Applicants) against the Order in appeal No. AHD-CUSTOM-000—APP- 104-105-16-17 dated 07.03.2017 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. Briefly stated the facts of the case are that the applicant arrived at the SVPI Airport on 04.10.2014 and opted for the green channel. On noticing the frequency of their visits the Applicant, Smt. Duriya Sadaf was directed to the red channel. She was subjected to a metal detector scan, and the officers recovered 20 gold bars totally weighing 2332.8 grams, valued at Rs. 57,55,204/- (Rupees Fifty seven lacs Fifty five Thousand Two hundred and four). The gold bars were recovered from the jeans pants worn by the Applicant. Enquiries revealed that the gold was given to her by her father Shri Mohammed Kazim Gouse Shingati who was travelling on the same flight. The officers also intercepted Shri Mohammed Kazim Gouse Shingati for further investigations.

3. The Original Adjudicating Authority vide Order-In-Original No. 143/ADC-AK/SVPFA/O&A/2015 dated 30.12.2015 ordered absolute confiscation of the impugned gold under Section 111 (d) (l) and (m) of the Customs Act,1962 and imposed penalty of Rs. 9,00,000/- (Rupees Nine lacs) each under Section 112 (a) of the Customs Act on both the Applicants. A penalty of Rs. 6,00,000/- (Rupees Six lacs)was also imposed on Smt. Duriya Sadaf under Section 114AA of the Customs Act 1962.

4. Aggrieved by the said order, the Applicants filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. AHD-CUSTOM-000—APP- 080-081-17-18 dated 06.07.2017 rejected the Applicants Appeal on the grounds of limitation as the application was received late by three day, and though within condonable limits no application for condonation of delay was put forward.

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

- 5.1 There was no wilfull misdeclaration of the gold imported.
- 5.2 There was no concealment
- 5.3 The gold bars were not brought for commercial purposes.
- 5.4 The Appellant Ms. Duriya Sadaf is not a carrier

5.5 Penalty imposed under section 112(b) and 114AA on Ms. Duriya Sadaf is not maintainable.

5.6 Rejection of invoice bills by the Adjudicating authority for the gold is not justified.

5.7 The Applicant Shri Mohammed. Kazim Gouse Shingati claims ownership of the gold and prays for redemption.

5.8 The Applicant cited case laws in favour of his case and prayed for setting aside the Appellate order on grounds of limitation and release of the gold for redemption on suitable and reasonable fine based on profit margin or any other order as deemed fit in the facts and circumstances of the case.

6. A personal hearing in the case was scheduled in the case on 05.12.2019. Advocate for the Applicant Shri Rishikesh J Meher Advocate appeared for the hearing. He pleaded that the gold was brought by the Applicant Ms Duriya Sadaf and her father, there was no concealment and the Applicant was a NRI and not a carrier.

FINDINGS AND ORDER


7. The Government has gone through the facts of the case. The Applicant has mainly challenged the Appellate order in respect of limitation for the postal delay of three days inspite of the fact that the delay was within condonable limits. The Applicants also submit that the fact of the delay was not communicated to them and therefore they were not in a position to file the application for condonation of delay. This fact was also not communicated to them at the time of hearing. Government notes that there was sufficient cause in this case for condoning such delay as the Commissioner (Appeals) ought to have ascertained the reasons for the delay and taken then taken a decision on the issue. The Applicants contend that they have a strong case on merits and, therefore, the lower appellate authority's action had resulted in miscarriage of justice. The Hon'ble Supreme Court in the case of Collector Land acquisition Anant Nag & others v. Mst. Katiji and others (1987 (28) ELT 185 SC has held that when a delay is within condonable limits laid down by the statute, the discretion vested in the authority to condone such delay is to be exercised following principles laid down in the judgement. Government therefore condones the delay of three days which is in condonable limits and proceeds to decide the case on merits.

8. The facts of the case state that the Applicants were diverted to the red channel after the officers noticed the frequency of their visits. In their declaration forms the Applicants have reportedly declared that they were not carrying any dutiable goods. The

impugned gold was discovered only after the Applicant, Ms Duriya Sadaf was subjected to a metal detector scan. Even after the scan Ms. Duriya Sadaf denied carrying any dutiable items. The quantity of gold recovered is by no means small. The officers have recovered 20 gold bars totally weighing 2332.8 grams, valued at Rs. 57,55,204/- (Rupees Fifty seven lacs Fifty five Thousand Two hundred and four). The above facts case clearly indicate that the Applicants had no intentions of declaring the gold. Being frequent travellers the Applicants were well aware that gold in such a large quantity is required to be declared mandatorily. The Applicants have pleaded for redemption of the gold on payment of redemption fine, the Government however, keeping in mind the facts of the case, especially with respect to non declaration and quantity of gold recovered is not inclined to accept their plea. The absolute confiscation of the case is therefore to be upheld.

9. The Government upholds the absolute confiscation of the gold. Government observes that once penalty is imposed under section 112(a) of the Customs Act,1962 there is no necessity of imposing penalty under section 114AA. The penalty of imposed under section 114AA of the Customs Act,1962 is set aside.

10. Revision application is disposed of on above terms.


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

ORDER No. 150/2020-CUS (WZ) /ASRA/MUMBAI DATED 31 08.2020

To,

1. Shri Mohammed Kazim Gouse Shingati, Shingati House, Mohalla Murdeshwar Bhatkal, Murdeshwar district, Karwar 581350.
2. Smt. Duriya Sadaf, Doctor House, Doctor street, Murdeshwar district, Karwar 581 350.

Copy to:

1. The Commissioner of Customs, SVPI Airport, Ahmedabad.
2. Shri Rishikesh J. Mehra, Advocate, C/11 Rathi Apartments , Opp. Power House Colony, Dharamnagar, Sabarmati, Ahmedabad - 380 005.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.