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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. 371/417/B/2019-RA

Date of Issue

ORDER NO. 18/2020-CUS (SZ)/ASRA/MUMBAI DATED 05-3-2020 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 Mukesh Chimanlal Parekh

Respondent : Commissioner of Customs, Mumbai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. MUM-
CUSTM-PAX-APP-230/19-20 dated 28.06.2019 passed by
the Commissioner of Customs (Appeals), Mumbai.

ORDER

This revision application has been filed by Shri Mukesh Chimanlal Parekh (herein after referred to as the Applicant) against the order in appeal Order-in-Appeal No. MUM-CUSTOM-PAX-APP-230/19-20 dated 28.06.2019 passed by the Commissioner of Customs (Appeals), Mumbai.

2. Briefly stated the facts of the case are that on 24.10.2018 the Officers of Air Intelligence unit, Mumbai Intercepted four passengers namely, Shri Mukesh Chimanlal Parekh, Shri Sunilkumar Kantilal Hajwriwala, Smt. Smitaben Mukeshkumar Parekh and Smt. Krishna Mukeshkumar Parekh. Examination and a personal search of Mukeshkumar Parekh resulted in the recovery of 8 gold bangles, from his front trouser pocket, two kadas which he had worn on both his arms, and five gold chains he had worn on his neck. The gold totally weighed 1200 grams valued at Rs. 35,03,988/- (Rupees Thirty five lacs Three thousand Nine hundred and Eighty eight.).

3. The Original Adjudicating Authority vide Order-In-Original No. ADC/AK/ADJN/468/2018-19 dated 28.02.2019 ordered confiscation of the impugned gold under Section 111 (d) (l) (m) and (o) of the Customs Act,1962, but allowed redemption of the gold on payment of redemption fine of Rs. 6,50,000/- (Rupees Six lacs Fifty thousand)and imposed penalty of Rs. 4,25,000/- (Rupees Four lacs Twenty Five thousand) under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. MUM-CUSTOM-PAX-APP-230/19-20 dated 28.06.2019 reduced the redemption fine to Rs. 5,00,000/- (Rupees Five lacs) and also reduced the penalty to Rs. 3,50,000/- (Rupees three lacs Fifty thousand) and modified the Order in Original.

5. Aggrieved with the above order the Applicant, has filed this revision application alongwith an application for condonation of delay of 10 days on the following grounds;

5.1 The OIA dated 28.06.2019 passed by the Ld. Commissioner (Appeals) is required to be modified on the grounds explained herein below.

5.2 Valuation of goods shall be as per Market Value of goods instead of tariff value as per Notification No. 109/2017-Cus.(NT). In the present case, the duty rate confirmed is not 10% under Sr. no 356 and 358 of Notification no 50/2017-Cus. dated 30.06.2017. Rather the rate of duty is confirmed as per baggage rate under notification 26/2016-Cus.(NT) dated 31.03.2016. Therefore, the valuation of goods cannot be done as per the tariff value of goods under Notification no 109/2017-Cus. (NT) as it applies only to those cases where duty rate is as per Sr. no 356 and 358 of Notification no 50/2017-Cus dated 30.06.2017.

5.3 Thus, the value of goods has to be determined under Section 14 of Customs Act, 1962 read with Customs Valuation (Determination of Value of Imported Goods) Rules 2007.

5.4 In absence of the actual transaction value, it should be arrived at by applying deductive method under Rule 7 of Valuation Rules, 2007. The market value in India, prevailing at the time of import, was less than Rs. 28,50,000/- per kg which can be verified from various websites. Therefore, the maximum market value of seized goods i.e. Assessable Value + 36.05% Duty would come to Rs. 34,20,000/- (Rs. 28,50,000 X 1.2Kg).

5.5 It is submitted that the value of jewellery of 1.2 Kg shall not be valued as per tariff value of goods in terms of Notification 109/2017 rather the market value of the goods at the time of import shall be considered as the value of goods as the goods are subject to baggage rate of customs duty.

~~5.6 Thus, in view of the aforesaid submissions with regard to the valuation of~~
seized goods, the OIA dated 28.06.2019 deserves to be modified and present application deserves to be allowed in favour of the Applicant.


6. A personal hearing in the case was held on 28.01.2020 the Applicant Shri Mukesh Chimanlal Parekh, attended the hearing, he stated that the gold was ancestral and was recovered from all the four passengers travelling with him, however the case was registered only in his name. He requested for reduction of redemption fine and penalty and release of the gold.

7. In the interest of justice the delay in filing the Revision is condoned and the case is taken up on merits. The facts of the case reveal that the Applicant had brought 8 gold bangles, from his front trouser pocket, two kadas which he had worn on both his arms, and five gold chains he had worn on his neck totally weighing 1200 grams valued at Rs. 35,03,988/- (Rupees Thirty five lacs Three thousand Nine hundred and Eighty eight.). A proper declaration was not made as required under section 77 of the Customs Act,1962 therefore the confiscation of the gold is upheld.

8. Government has gone through the facts of the case. The Order in Original notes that the Applicant was travelling alongwith two of his relatives, two females and one male friend. The gold was recovered from Shri Mukesh Chimanlal Parekh, the impugned gold consists of eight gold bangles, two gold kadas, and five gold chains. The Applicant at the time of hearing has insisted that the gold was ancestral and was also recovered from the persons travelling with him, however the case has been booked as if he alone was carrying the gold. It is noted that the impugned gold consists of bangles and kadas and gold chains and therefore accepting the argument that the gold bangles and chains were all worn by the Applicant is disputable. The government is therefore inclined to accept the submission of the Applicant that the gold was worn by the other passengers as well. Government also notes that the import of gold is restricted not prohibited. The gold was not ingeniously concealed. The Applicant insists that the gold is ancestral and ownership of the gold is not disputed. The Applicant is not a frequent traveller and was not engaged in any organised smuggling activity earlier. The Applicant pleaded for release of the gold on reduced redemption fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

10. Accordingly, the redemption fine is reduced from Rs. 5,00,000/- (Rupees Five lacs) to Rs.2,50,000/- (Rupees Two Lacs Fifty Thousand only). The penalty of Rs. 3,50,000/- (Rupees Three Lacs Fifty thousand) imposed under section 112 (a) is also reduced to Rs.2,00,000/- (Rupees Two Lacs only).

11. Revision application is allowed on above terms.
12. So, ordered.


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

ORDER No. } 8/2020-CUS (SZ) /ASRA/MUMBAI DATED c/s 3.2020

To,
Shri Mukesh Chimanlal Parekh,
Mevada Falia Vachli Khadki,
Ankleshwar, Baruch-393-001.

Copy To,

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