

F.No.371/24/B/14-RA  
F.No.371/25/B/14-RA  
F.No.371/27/B/14-RA

REGISTERED  
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.371/24/B/14-RA  
F.No.371/25/B/14-RA  
F.No.371/27/B/14-RA

Date of Issue : 20.12.2017.

538

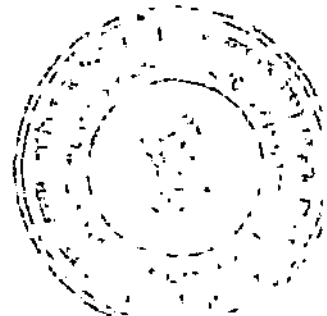
ORDER NO. 18-20/2017-CUS (WZ) / ASRA/MUMBAI/ DATED 20.12.2017  
OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR  
MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL  
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD  
OF THE CUSTOMS ACT, 1962.

Applicants :

Sl.No.	Applicant	Revision Application No.
1.	Shri. Ramesh Pukhraj Bafna	371/24/B/14-RA
2.	Ms. Vijeta Ramesh Bafna	371/25/B/14-RA
3.	Smt.Umbari Ramesh Bafna	371/27/B/14-RA

Respondent : Commissioner (Appeals), Customs -Zone-III, Mumbai.

Subject :RevisionApplication filed, under Section 129DD of the Customs  
Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-  
APP-314 to 316/13-14 dated 18.11.2013 passed by the  
Commissioner of Customs (Appeals), Mumbai-III.





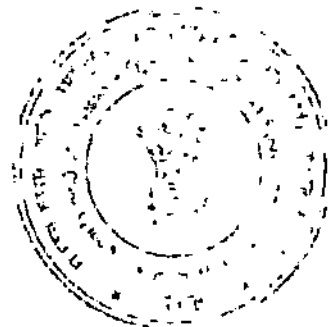
3. Aggrieved by the impugned Order-in-Original, the applicants, filed appeals, on the grounds, interalia, that the jewellery was brought for marriage in the family; that the goods should have been allowed to be redeemed; that import of gold jewellery is permitted freely under the FTP and that the order be set aside. The applicants had also filed separate applications for waiver of pre-deposit of penalties imposed by the lower Authority pleading that no prejudice would be caused to the revenue if the appeals are heard without making pre-deposit and that the unjustified liability has caused undue hardship to them.

4. The applications for waiver of pre-deposit were disposed off by Commissioner (Appeals) vide Orders-in-appeal Nos. MUM-CUSTOM-PAX-APP-177, 178 & 179/13-14 dated 26.09.2013 ordering the applicants, viz. Shri Ramesh Pukhraj Bafna, Smt. Umbari Ramesh Bafna and Ms. Vijeta Bafna to deposit/pay reduced amounts of Rs.2,00,000/- Rs.1,00,000/-and Rs. 1,00,000/- respectively, within thirty days thereof for granting formal hearings in the main appeals. The applicants were also cautioned that on failure to comply with the same, the original appeals are liable to be rejected for non-compliance of the conditions under section 129E of the Customs Act, 1962. Time period allowed for making the pre-deposit ended on 26.10.2013.

5. The applicants instead of making the pre-deposit as ordered by Commissioner (Appeals), vide their further applications dated 15.10.2013 pleaded that the said orders be modified to the extent that it directed payment of pre-deposit by the applicants for hearings and final disposal of the appeals. As these applications did not bring forth any new facts or circumstances or new pleadings or evidences of any kind of hardship, financial or otherwise, Commissioner (Appeals), relying on the Apex Court Judgement in the case of UOI & another vs. M/s. Jesus Sales Corporation [2002-TIOL-259--SC-CUS =



*[Handwritten signature]*



1996(4) SCC 69], Ketan Parekh vs. Special Director, directorate of Enforcement [2012 (275) E.L.T. 3 (S.C.)] and also relying upon the decision of the Hon'ble High Court of Judicature at Bombay in Baron International Ltd. vs. Union of India - 2004 (163) E.L.T. 150 (Bom.) and decision in the case of Jai Prakash Strips Ltd. vs. Commissioner - 2009 (243) E.L.T. 476 (Tribunal) dismissed all these appeals for the non-compliance with the conditions under Section 129 E of the Customs Act, 1962.

6. Aggrieved by the impugned Order in Appeal, the applicants filed the present Revision Applications generally on the following Grounds of Appeal:

- (i) The Ld. Commissioner (Appeals) erred in failing to appreciate that the penalties imposed on the applicant are harsh and not commensurate with the offence alleged,
- (ii) Impugned Order in Appeal dismissing the Appeal is consequential to non-compliance by the applicant with the interim Order-in Appeal, however, no opportunity was given to the applicants before dismissing the Appeal that ground,
- (iii) When the entire seized goods are lying in the custody of the department, Ld. Commissioner (Appeals) has erred in demanding pre deposit of penalty as a pre-condition for hearing the appeal,
- (iv) The import of the gold jewellery is permitted 'freely' under the Foreign Trade Policy , that the respondents ought to have considered unless the importation or exportation of goods is expressly "prohibited", the Adjudicating authority is bound to give to the owner of the goods an option to pay fine in lieu of confiscation under Section 125 of the Customs Act,

In the context of Section 125, ibid, if the word "prohibited" is



*Handwritten signature*

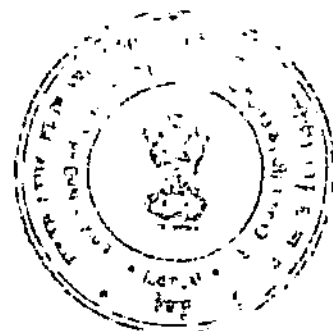


construed as to apply in respect of every violation of any regulation or restriction or statutory procedural requirement, the said section would be rendered redundant and meaningless, and no such interpretation can thus be given in the context of Section 125, in the light Judgement of Hon'ble Supreme Court in Asian Food Industries r/w the other referred binding precedents on interpretation of words "unless the context otherwise requires. The judgements relied in the impugned order are not applicable in the fact situation,

- (vi) The Ld. Commissioner (Appeals) erred in not following the principles of natural justice, the factual situation obtaining in the present case is peculiar in contrast with the cases cited by the Ld. Commissioner(Appeals) in para 7 of impugned order rejecting the Modification application,
- (vii) The Ld. Commissioner (Appeals) failed to appreciate decision of his counterpart in Goa who in a similar case waived pre-deposit of penalties, The Ld. Commissioner (Appeals) failed to appreciate that the applicant had brought the gold jewellery for his daughter's marriage which was scheduled on 30.11.2012 and the adjudicating authority ought to have released the gold jewellery on payment of redemption fine,
- (viii) The Ld. Commissioner (Appeals) also failed to appreciate that the Gold jewellery is not in the list of prohibited under ITC (HS),
- (ix) Based on the various case laws relied on, the adjudicating authority ought to have granted option to redeem the goods in case of confiscation thereof,



*Am*



- (x) The Ld. Commissioner (Appeals) without judiciously considering vital aspects of the matter and the undisputed position regarding purpose of import of the subject gold jewellery for personal use in the marriage of the applicant's daughter.

In view of the above, the Applicants prayed for setting aside the Order in Appeal No. MUM-CUSTOM-PAX-APP- 314 to 316/13-14 dated 18.11.2013.

7. The applicants also filed stay applications in the respective Revision Applications praying therein to stay the operation of impugned Order in Appeal as well as common Order-in Original No. ADC/AS/ADJN/62/2012-13 dated 24.01.2013 passed by the Additional Commissioner of Customs, CSI Airport, Mumbai and to waive pre-deposit of any amount till the hearing and final disposal of the Revision Application. The applicants in their respective applications pleaded undue financial hardship in making pre-deposit of huge amount of penalties imposed vide Order in Original.

8. A personal hearing in the matter was fixed on 13.12.2017 before Revisionary Authority which was attended by Shri Lilesh Sawant, Advocate duly appointed by all the three applicants. He reiterated the submissions filed in these impugned revision applications. He pleaded that the absolutely confiscated goods may be allowed for re-export and the penalty amounts may be reduced taking a lenient view.

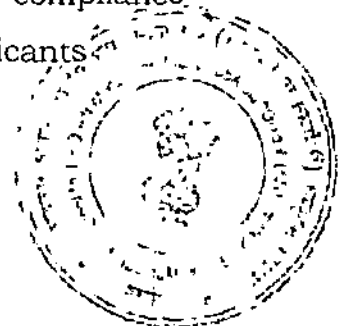
9. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Orders-in Appeal.

10. On perusal of records, Government observes that the appeals filed by the applicants before the Commissioner (Appeals) were rejected for non-compliance

provisions of Section 129E of the Customs Act, 1962 as the applicants



*Duy*



failed to deposit amounts ordered vide Order-in-appeal Nos. MUM-CUSTOM-PAX-APP-177, 178 & 179/13-14 dated 26.09.2013. Now, in the Revision Applications as well as stay applications the applicants had mainly pleaded to waive the pre deposit of penalty and decide the case on merits.

11. In this regard Government notes that the total penalty imposed by the lower Authority on the three applicants viz. Shri Ramesh Pukhraj Bafna, Smt. Umbari Ramesh Bafna and Ms. Vijeta Bafna was Rs. 4,25,000/- Rs.2,25,000/- and Rs. 1,25,000/- respectively. As against this, Commissioner (Appeals) vide interim Orders-in-appeal Nos. MUM-CUSTOM-PAX-APP-177, 178 & 179/13-14 dated 26.09.2013 ordered the applicants, viz. Shri Ramesh Pukhraj Bafna, Smt. Umbari Ramesh Bafna and Ms. Vijeta Bafna to deposit/pay reduced amounts of Rs.2,00,000/- Rs.1,00,000/- and Rs. 1,00,000/- respectively.

12. Government further notes that the appeals filed by the applicants were not decided on merits and therefore, finds it in the interest of justice and also in view of the fact that the impugned goods are in the custody of the department, to reduce the pre-deposit amount so that these applicants can pursue appeal before Commissioner (Appeals) by depositing lesser amount. Government, therefore, keeping in view the overall circumstances of the case reduces the pre-deposit amount to be paid Shri Ramesh Pukhraj Bafna, Smt. Umbari Bafna and Ms. Vijeta Bafna from Rs.2,00,000/-, Rs.1,00,000/- and Rs. 1,00,000/- respectively to Rs.50,000/- (Rupees Fifty Thousand), Rs.25,000/- (Rupees Twenty Five Thousand) and Rs.25,000/- (Rupees Twenty Five Thousand) respectively. All the applicants are directed to deposit the said amount within 4 weeks of receipt of this order and on getting confirmation of the said deposits; the appeals will get restored to Commissioner of Customs (Appeals), Mumbai- III who will decide these appeals on merits and also in accordance with law within 8 weeks from the date of restoration of three



appeals. A reasonable opportunity of hearing will be afforded to the applicants. In case the applicants fail to deposit the aforesaid amounts within stipulated time, the Order in Appeal dismissing the appeals for nonpayment of pre-deposit will hold good.

13. The Revision Applications are disposed off in terms of above.

14. So, ordered.

*Ashok Kumar Mehta*  
20.12.17

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

ORDER No.18-20 /2017-CUS (WZ) /ASRA/ DATED 20.12.2017

To,

- (1) Shri Ramesh Pukhraj Bafna, A/41 Bharat nagar, D.B. Marg, Grant Road, Mumbai 400 007.
- (2) Ms. Vijeta Bafna, A/41 Bharat nagar, D.B. Marg, Grant Road, Mumbai 400 007.
- (3) Smt. Umbari Bafna, A/41 Bharat nagar, D.B. Marg, Grant Road, Mumbai 400 007.

Copy to:

1. The Commissioner, of Customs, Chhatrapati Shivaji International Airport, Level -2, Terminal -2, Mumbai 400099.
2. The Commissioner of Customs (Appeals), Mumbai -III, Awas Corporate Point ,5<sup>th</sup> Floor, Makwana lane, Behind S.M. Centre, Andheri Kurla Road, Marol, Mumbai 400 059.
3. The Additional Commissioner of Customs, Chhatrapati Shivaji International Airport, Level -2, Terminal -2, Mumbai 400099
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

True Copy Attested

