



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

F.No. 371/27/B/15-RA

4206

Date of Issue

12.08.2021

ORDER NO. 181/2021-CUS (WZ)/ASRA/MUMBAI DATED 30.07.2021 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 Ahmed Mohammad Raees

Respondent : Pr. Commissioner of Customs, (Airport), Mumbai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal MUM-CUSTOM-PAX-APP-693/14-15 dated 04.03.2015 passed by the Commissioner of Customs (Appeals), Mumbai-III.

ORDER

This revision application has been filed by Ahmed Mohammad Raees (herein after referred to as the Applicant) against the Order in appeal No. MUM-CUSTOM-PAX-APP-693/14-15 dated 04.03.2015 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated the facts of the case are that the Applicant, Shri Ahmed Mohammad Raees arrived from Riyadh on 29.10.2013. The officers of Customs intercepted him as he opted for the green channel. The examination of his baggage resulted in the recovery of 4 gold bars totally weighing 400 grams and valued at Rs. 10,71,360/- (Rupees Ten lakhs Seventy one Thousand and Three hundred and sixty). The gold bars were concealed as chocolates in boxes containing chocolates.

3. The Original Adjudicating Authority vide Order-In-Original No. ADC/ML/ADJN/82/2014-15 dated 14.10.2014 ordered absolute confiscation of the impugned gold collectively weighing 400grams, and imposed penalty of Rs. 1,00,000/- (Rupees One lakh) under section 112 (a) and (b) of the Customs Act, 1962 on Applicant.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. MUM-CUSTOM-PAX-APP—693/14-15 dated 04.03.2015. The Appellate Authority rejected the Appeal.

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

5.1 The Applicant submits that the findings and order passed by the Respondent are contrary to the law and evidence on record.

5.2 The Applicant submits that the findings and order passed by the Ld. Respondent are bad in law, illegal, unjust and unfair.

5.3 The Applicant submits that in view of the Ld. Adjudicating Authorities order dated 24.12.2013 in the case of Mr. Addul Latheef Kunjathur Manjeswar, involving similar type of concealment of gold, the Department has allowed redemption of goods on payment of fine and penalty. (copy enclosed).

5.4 The Applicant submits that the entire order passed by the Ld. Respondent clearly reflects non application of mind on the part of the Ld. Respondent.

5.5 The Applicant submits that the impugned order reflects a total bias against the Applicant on the part of the Ld. Respondent.

5.6 The Applicant humbly prays that the impugned Order-in-Appeal No MUM-CUSTOM-PAX-APP-693/14-15 be modified to the extent that the gold be released to the Appellant considering the facts on record. Or any other orders or relief as may be deemed necessary.

6. Personal hearings in the case was scheduled on 19.03.2021. Shri N. J. Heera, Advocate attended the said hearing and reiterated the submissions. He requested to reduce the Redemption fine and Penalty as he is an eligible passenger to import gold. He further submitted that same adjudicating authority vide Order in original ADC/ML/ADJN/55/2013-14 dated 24.12.2013 released gold brought on identical conditions with reasonable redemption fine and penalty. Nobody attended the hearing on behalf of the respondent.

7. The Government has gone through the facts of the case, The officers of Customs on examination of the Applicants baggage recovered four gold bars from a two boxes containing chocolates. The gold bars were concealed and wrapped to resemble chocolates. The facts regarding the interception and subsequent detection are not in dispute. The Applicant did not file any declaration as required under section 77 of the Customs Act, 1962 and was intercepted as he tried to clear himself through the green channel. The confiscation of the gold is therefore justified.

8. Government observes that in the present case the Applicant has submitted the arrival and departure details for the previous six months before he was apprehended along with copies of his passport, claiming that he is an eligible passenger for import of gold. The aspect of eligibility for import of gold was not brought out by the Applicant at the adjudication nor Appeal stage before. Therefore, this aspect is not being examined at this stage.

9. The Applicant has also submitted that in a similar case the Adjudicating Authority vide no ADC/ML/ADJN/82/2014-15 dated 14.10.2014, involving similar type of concealment, allowed redemption of goods on payment of redemption and penalty. Government also observes that the quantity of gold involved in the said case is twice the quantity involved in the present case, the Original adjudicating authority has allowed redemption in the said case, but has denied the same in the impugned case. That decision of the adjudicating authority has not been contested by the department. The Hon'ble Supreme Court of India in the case of M/s Birla Corporation Ltd., V/s Commr. Of Central

Excise reported in 2005(186) ELT 266 (S.C.) wherein the Apex Court underlining judicial discipline states “ *Discrimination- When question arising for consideration and facts are almost identical to previous case, revenue cannot be allowed to take a different stand*”. Under the circumstances the Department, in the impugned case cannot order absolute confiscation when in the case stated earlier it has allowed redemption, when the facts of the case are identical. Government therefore notes that the order of the original adjudicating authority in the impugned case suffers from inequitable judicial discretion. As the facts of the two cases are same, discretion used in the said case is applicable to the impugned case and therefore the absolute confiscation of the gold bars cannot be sustained.

10. In view of the above the impugned gold bars weighing 400 grams and valued at Rs. 10,71,360/- (Rupees Ten lakhs Seventy one Thousand and Three hundred and sixty) are allowed redemption on payment of Rs...2,50,000/- (Rupees Two lakhs Fifty thousand) as redemption fine. The penalty imposed is appropriate.

Shrawan
30/7/21
(SHRAWAN KUMAR)

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

ORDER No.181/2021-CUS (WZ) /ASRA/MUMBAI DATED 30.07.2021

To,

1. Shri Ahmed Mohammad Raees, Sadarpur Baravali, Phulpur, Azamgarh UP.
2. Shri Ahmed Mohammad Raees, 1st Floor, A/8, Khurd Mahal, Mohili Village, Sakinaka, Andheri(E), Mumbai.
3. The Pr. Commissioner of Customs, CSI Airport, Sahar, Mumbai.

Copy to:

4. Shri N. J. Heera, Advocate, Nulwala Building, 41 Mint Road, Fort, Mumbai 400 001.
5. Sr. P.S. to AS (RA), Mumbai.
6. Guard File.
7. Spare Copy.