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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. 371/35/B/15-RA / 5-212

Date of Issue 16.09.2021

ORDER NO. ^{219/2021} CUS (WZ)/ASRA/MUMBAI DATED 26.08.2021 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 Mirza Yasir Hussain

Respondent : Pr. 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 -80/15-16 dated 04.06.2015 passed by
the Commissioner of Customs (Appeals), Mumbai-III.

ORDER

This revision application has been filed by Shri Mirza Hussain (herein referred to as Applicant) against the Order-in-Appeal No. Mum -CUSTM -PAX -APP - 80/15-16 dated 04.06.2015 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. On 27.03.2013 the officers of AIU intercepted the Applicant after he had cleared the green channel. An examination of his baggage and person resulted in the recovery of one armlet, four crude bangles and three gold chains totally weighing 812 gms, valued at Rs. 22,81,157/- (Rupees Twenty two lakhs Eighty one thousand one hundred and Fifty seven). The gold jewelry was covered in copper and silver coloured paint to hide the gold.

3. After due process of the law vide Order-In-Original No. ADC/ML/ADJN/72/2014-45 dated 30.09.2014 the Original Adjudicating Authority ordered absolute confiscation of the gold and imposed penalty of Rs. 2,50,000/- (Rupees Two lakhs Fifty thousand) under Section 112 (a) and (b) of the Customs Act,1962 on the respondent.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals), Commissioner (Appeals) vide his order No. Mum -CUSTM -PAX -APP -80/15-16 dated 04.06.2015 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 admits that he had intentions to evade payment of duty. But the method used was not ingenious concealment plan which requires skill. He is a poor man and he wanted to make profit out of selling the gold. He knew that he would be subjected to screening and the gold articles would be detected in screening even though they were painted, however if he would have gone undetected it would result in big savings.

5.2 He retracted his earlier statement dated 28.12.2013 as it was not true and he was threatened to admit to be a carrier for monetary consideration. The investigating agency did not rebut the retraction.

5.3 Gold is not a prohibited item, It is only a restricted item. As per the exemption notification No. 12/2012 a person who is coming to India after a period of six months can bring one kg gold on concessional rate of 10%, if he satisfies the conditions of the said notification.

5.4 That absolute confiscation of the gold jewelry belonging to the Applicant is too harsh a punishment for a first time offender. There is no material available with the authority to establish that the Applicant is a habitual offender. The intent of purchasing the gold was to make ornaments for his 3 daughters marriage.

5.5 The description of the gold jewelry in the panchanama and the SCN is different and not as assayed and certified by the approved valuer.

5.6 Section 125 of the Customs Act, 1962 provides for an option of redemption for improperly imported goods. The Applicant is entitled to an opportunity for redemption the gold jewelry.

5.7 The applicant submitted case laws in support of his case and prayed that the absolute confiscation of the gold jewelery be set aside. Personal penalty be reduced and any such relief as may deem fit and proper.

6. Accordingly personal hearings in the case were scheduled on 06.01.2021, 20.01.2021, 11.02.2021, 20.04.2021 and 27.04.2021. However neither the Applicant department nor the respondent in the case attended the scheduled hearings. The case is therefore being decided on basis of available records on merits.

7. The Government has gone through the facts of the case, and notes that it is an uncontested fact that the goods were not declared to the customs under Section 77 of the Act and the passenger passed through the green channel. In his declaration form he did not inform that he was carrying dutiable goods and had he not been intercepted he would have walked away with the impugned goods without declaring the same to Customs. The confiscation of the gold is therefore justified.

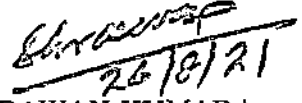
8. The core issue to be decided in this case is whether the impugned gold jewelry can be allowed redemption. In a recent judgement by the Hon'ble Supreme Court in the case of M/s Raj Grow Impex and others Vs UOI states ".....*when it comes to discretion, the exercise thereof has to be guided by law; according to the rules of reason and justice; and has to be based on the relevant considerations.....such an exercised cannot be based on private opinion.*" Government notes that there is no past history of such offence/violation by the Applicant. The impugned gold was concealed but not ingeniously. The applicant claims ownership of the gold and its ownership is not disputed. The quantity of gold is personal jewelry and not commercial in nature. The original adjudicating authority has absolutely confiscated the gold treating it as ingenious concealment. Manner of concealment alone cannot be a sole ground for exercising discretion. Further, concealment itself in the instant case cannot be said to be ingenious. Thus Government opines that the absolute confiscation is harsh and a more reasonable approach would be to allow redemption on suitable fine and penalty.

9. Further, The Hon'ble Supreme Court of India in Hargovind Das K Joshi Versus Collector of Customs reported in 1992 (61) ELT 172 has set aside Absolute confiscation of goods by Collector without considering question of redemption on payment of fine although having discretion to do so, and remanded the matter to Collector for consideration of exercise of discretion for imposition of redemption fine as per Section 125 of Customs Act. 1962. Government also notes that even prohibited goods can also be allowed for redemption at the discretion of the judicial authority. The section also allows goods to be released to the person from whose possession or custody such goods have been seized. This general principle has been relied in catena of cases by higher courts. Under the circumstances the Government opines that the order of absolute confiscation in the impugned case is harsh and unjustified. The order of the Appellate authority is therefore liable to be set aside and the goods are liable to be allowed redemption on suitable redemption fine and penalty.

10. In view of the above Government is inclined to take a reasonable view in the matter and sets aside the impugned orders of the Appellate authority in respect of the impugned gold. The impugned gold jewelry weighing 812 gms valued at Rs. Rs. 22,81,157/- is allowed redemption on payment of

Rs.11,25,000/- (Rupees Eleven lakhs Twenty five thousand). The penalty of imposed under section 112 (a) of the Customs Act is appropriate.

11. Revision Application is disposed of on above terms.


26/8/21
(SHRAWAN KUMAR)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No.20/201.-CUS (WZ) /ASRA/

DATED 26.08.2021

To,

1. Shri Mirza Yasir Hussain, r/o Chikballapur Dist, Gowribidanur Taluka, Alipur, Karnataka.
2. The Pr. Commissioner of Customs, CSI Airport, Sahar, Mumbai.

Copy to:

1. Shri Prakash Shingrani, Advocate, 12/334, New MIG Colony, Bandra (East) Mumbai 400 051
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.