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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. 371/45/B/2018-RA | 1015 : Date of Issue | 3.02.2023

ORDER NO. 226/2023-CUS (WZ)/ASRA/MUMBAI DATED 03.02.2023 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 : Mrs Reshma Dirghangi

Respondent : The Commissioner of Customs, Pune.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. PUN-CT-APPII-000-210-17-18 dated 05.10.2017 [Date of issue: 05.10.2017] [F.No V-2 PI/195/CUS/Ref/2016/141/2017-18] passed by Commissioner of Customs (Appeals), Central Tax, Pune-II

ORDER

This Revision Application has been filed by Mrs Reshma Dirghangi (herein after referred to as the 'Applicant') against the Order-in-Appeal No. PUN-CT-APPII-000-210-17-18 dated 05.10.2017 [Date of issue: 05.10.2017] passed by Commissioner of Customs (Appeals), Central Tax, Pune-II

2. - Brief facts of the case are that on 14.07.2015, the Applicant was intercepted by officers of Customs on her arrival from Dubai by Air India Flight No. IX-212, as during screening of her baggage it was noticed that she was in possession of gold ornaments but the same had not been declared in the Indian Customs Declaration form as required under Section 77 of the Customs Act, 1962. On enquiry, the Applicant accepted and revealed that she was in possession of gold ornaments purchased by her in Dubai and produced an invoice dated 23.04.2015 for the same. The Applicant agreed to pay the customs duty of Rs. 90,433/-, which was paid vide challan No 99 dated 14.07.2015. The Applicant, subsequently filed a refund application dated 23.07.2015 for refund of excess customs duty paid by her by claiming exemption under Notification No. 12/2012-Customs dated 17.03.2012, which dealt with import of gold in the form of bar/ornaments upon payment of 10% basic customs duty under Condition No. 35 of the said Notification which specifies that

- (a) the duty shall be paid in convertible foreign currency
- (b) the quantity of import does not exceed one kilogram of gold
- (c) the eligible passenger should file a declaration in the prescribed form before the proper officer of the customs at the time of arrival in India and pays the duty leviable thereon before his clearance from Customs

3. The Refund Sanctioning Authority i.e Assistant Commissioner of Customs, Pune International Airport vide Order-In-Original No. AirCus/49-69/Refund/2015-08/2016 dated 14.03.2016 rejected the refund

4. Aggrieved by the said order, the Applicant filed an appeal before the Appellate Authority viz Commissioner (Appeals), Central Tax, Pune-II, who vide Order-in-Appeal No. PUN-CT-APPII-000-210-17-18 dated 05.10.2017 [Date of issue: 05.10.2017] rejected the appeal on the grounds that the Applicant was not eligible for grant of benefit of exemption notification and was required to pay duty at the baggage rate of 36% and that the Applicant was not entitled to concessional rate of customs duty as per exemption Notification No 12/2012-Customs dated 17.03.2012 and consequently not entitled to refund.

5. Aggrieved with the aforesaid order dated 05.10.2017 passed by the Commissioner (Appeals), Central Tax, Pune-II, the Applicant filed this revision application inter alia on the following grounds:

5.01. That the AA in the instant case had not considered the submissions made by the Applicant and without proper interpretation and study of the relevant law and the precedents of the higher authorities;

5.02. That the authorities brought the 'convertible foreign currency' and 'Red Channel' angle to cover up the error of having realized that the Applicant was eligible for the rate of duty to be 10%;

5.03. That the OAA and the AA gave only a partial view of the issues and completely ignored the important fact that duty @36% was advised based on passport examination in Pune Airport by customs citing the reason that the Applicant had travelled to India within last six months and therefore was not eligible for duty @ 10%;

5.04. That the convertible foreign currency issue was an afterthought by the department to deny the refund as the customs officer always demanded duty @ 36%;

5.05. That the Applicant made the payment in Indian currency only because excess custom duty was charged by the Customs officers and they had not informed the Applicant about the benefit of the notification and mode of payment;

5.06. That the payment in Indian currency was a procedural lapse and can be condoned and that the Applicant was ready to make payment in foreign currency and go get refund of the entire amount paid as customs duty;

5.07. That the Applicant had passed through the red channel which showed that she had no malafide intention to evade customs duty;

5.08. That the Applicant was not aware that she will have to pay duty on a necklace meant for personal use and that after screening of the baggage and on being asked whether she was carrying gold, she replied in the affirmative;

5.09. That the case laws referred to in the application before the AA, may be used in the Revision Application.

Under the circumstances, the Applicant have prayed to set aside the order passed by the Appellate Authority and sanction the rejected refund claim

6. Personal hearing in the case was scheduled for 04.08.2022 or 26.08.2022 or 02.09.2022 The Applicant appeared for the personal hearing online on 02.09.2022. She submitted that she was charged incorrect rate of duty ignoring that she was an eligible passenger entitled for concessional rated of duty. She further submitted that she had some foreign exchange and remaining she could have got it exchanged at the airport itself. She

further mentioned that she was not informed to pay duty in foreign exchange and eligible rate was concessional rate.

7. Government has carefully gone through the facts of the case and the revision application filed by the applicant and has perused the impugned Order-in-Original and Order-in-Appeal.

7.1. Government notes that the Applicant has averred that she was not informed that she would be eligible for rate of duty @ 10% and that it was only after being told to pay duty @ 36% and paying the same, she realized that she was eligible to pay duty @ 10%, the refund claim was filed by the Applicant. Government notes that the eligibility of the Applicant to be sanctioned the refund claim is dependent whether the conditions at Sr. No. 35 of Notification No 12/12-Cus dated 17.03.2012 has been adhered to by the Applicant.

7.2. Notification No 12/12-Cus dated 17.03.2012 and condition No 35 of the same reads as under:

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 21/2002- Customs, dated the 1st March, 2002 Published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 118(E) dated the 1st March, 2002, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India,-

(a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table;

(b) from so much of the additional duty leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act 1975 (51 of 1975) as is in excess of the additional duty rate specified in the corresponding entry in column (5) of the said Table, subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said Table:

Sr.No	Chapter or Heading or sub-heading or tariff item	Description of goods	Standard rate	Additional duty rate	Condition No
1	2	3	4	5	6
321	71 or 98	(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger (ii) Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls	4%	Nil	35
			10%	Nil	35

Condition No 35 reads as under

If,-

1. (a) the duty is paid in convertible foreign currency;
(b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and
2. the gold or silver is,-
 - (a) carried by the eligible passenger at the time of his arrival in India, or
 - (b) imported by him within fifteen days of his arrival in India, or
 - (c) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1;

provided such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs.

Explanation.- For the purposes of this notification, "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits.

7.3. Government proceeds to determine whether the Applicant has fulfilled the conditions No. 35 of the said Notification for being eligible for the refund being claimed by her. Government observes from the records that the Applicant was an 'eligible' passenger in terms of the explanation of the term 'eligible passenger' given at the said condition No. 35. Further, the quantum of gold jewellery under import is small and is not of commercial quantity. The gold jewellery seems to be the personal jewellery of the Applicant. It is not the case that the Applicant had concealed the gold jewellery but had accepted that she was in possession of the gold jewellery. The Applicant also produced the invoice for the purchase of the gold jewellery in question. The instant case is a case of non-declaration of gold at the initial stage and subsequently the duty @36.5% has been paid whereas the Applicant was eligible for duty at concessional rate in terms of the said Notification.

7.4. As regards the contention of the department that the Applicant was required to file a declaration in terms of the proviso to condition no 35, Government notes that the proviso to condition no 35 states that "*provided such eligible passenger files a declaration in the prescribed form before the*

proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold or silver **from such a customs bonded warehouse** and pays the duty leviable thereon before his clearance from customs." . Thus it is clear that the condition of filing the declaration is a requirement only when gold is to be taken from a custom bonded warehouse, unlike in the instant case.

8. In view of above discussions, Government finds that the Applicant is eligible for the refund amount of Rs. 65,354/- and thus sets aside the Order-in-Appeal No. PUN-CT-APPII-000-210-17-18 dated 05.10.2017 [Date of issue: 05.10.2017] [F.No V-2 PI/195/CUS/ Ref/2016/141/2017-18] passed by Commissioner of Customs (Appeals), Central Tax, Pune-II and allows the Revision Application.

9. The Revision Application is disposed off on the above terms.

Shrawan
9/2/23
(SHRAWAN KUMAR)

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

ORDER No. 226/2023-CUS (WZ) /ASRA/ DATED 09.02.2023

To,

1. Mrs. Reshma Dirghangi, AL Durrah 3, Apartment No. 203, Mankhool, Behind Burjuman Centre, Dubai, UAE
Address No. 2: Mrs. Reshma Dirghangi, C/o Amit Bhattad, Advocate, 2A Ground Floor, Radha Govind Apartment, 433, Narayan Peth, Near Patrya Maruti, Pune-411 030.
2. The Commissioner of Customs, Pune, 2nd Floor, GST Bhavan, 41/A, Sassoon Road, Pune 411 001.
3. The Commissioner (Appeals), Central Tax, Pune-II, 2nd Floor, GST Bhavan, 41/A, Sassoon Road, Pune 411 001.

Copy to:

1. Shri Amit Bhattad, Advocate, 2A Ground Floor, Radha Govind Apartment, 433, Narayan Peth, Near Patrya Maruti, Pune-411 030.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.