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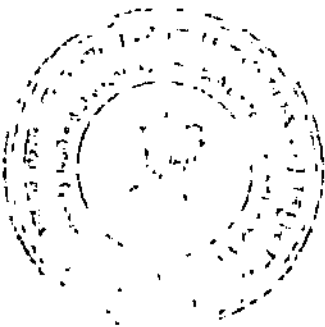
Date of Issue 29.12.2017

ORDER NO. 23/2017-CUS (WZ) / ASRA / MUMBAI/ DATED 26.12.2017 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.

Applicant : ShriHameedLebbeRifkhan.

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

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-354& 355/14-15 dated 28.08.2014 passed by the Commissioner of Customs (Appeals), Mumbai-Zone III.



ORDER

This revision application has been filed by ShriHameedLebbeRifkhan, hereinafter referred to as the "Applicant", against order-in-appeal no. MUM-CUSTM-PAX-APP-354 & 355/14-15 dated 28.08.2014 passed by the Commissioner of Customs (Appeals), Mumbai-Zone III.

2. Brief facts of the case are as follows; The Applicant, arrived on 03.04.2014 at C.S. I. Airport, Mumbai from Colombo Flight No. UL-141. The Applicant opted for Green Channel Customs clearance, but was diverted for examination. He was found to be wearing gold jewelry i.e. one gold chain with bracelet weighing 235 grams all cumulatively valued at Rs.6,10,923/-. As the Applicant was not eligible for gold import and as he did not declare the gold at the time of arrival, the gold chain and the gold rings were seized and the matter was taken up for adjudication.

3. The Case was adjudicated by the Joint Commissioner of Customs, C.S.I. Airport, Mumbai who ordered the confiscation of the goods, totally valued at Rs. 6,10,923/-, but with an option to the Applicant to redeem the same on payment of a fine of Rs.2,25,000/- in lieu of confiscation. The Commissioner of Customs also imposed a Personal Penalty Rs. 60,000/- under Section 112 (a) & (b) of the Customs Act, 1962 and a penalty of Rs. 5,000/- on the Applicant under Section 114 AA of the Customs Act, 1962. Being dis-satisfied with the order the Applicant filed an Appeal before the Ld. Commissioner of Customs (Appeals) Mumbai Zone III who vide his Order-in-Appeal dated 28.08.2014 rejected the Appeal.

4. Being aggrieved and dis-satisfied with the above Order in Appeal, the Applicant has filed this Revision Application on the following grounds.

- i. The Applicant is a Foreign National.
- ii. The Gold jewelry was found to be on his person.
- iii. The said Gold items were not concealed in any manner.
- iv. It is the first time that the Applicant has brought the said type of item.
- v. Applicant was not aware of the Indian Custom rules.
- vi. The goods, brought in by the Applicant were not for sale.
- vii. The said goods brought in by Applicant are for personal & bonafide use.
- viii. The said goods may kindly be allowed for re-export, as in similar type of cases Re-export has been granted by the concerned authorities.



5. A personal hearing was granted to the Applicant on 04.12.2017, which was attended by the Advocate, Shri A. M. Sachwani. The advocate requested for an adjournment which was acceded to and the personal hearing was rescheduled on 13.12.2017. The Advocate, Shri A. M. Sachwani, appeared for the Applicant and re-iterated the submissions filed in the grounds of Appeal and pleaded to allow the Revision Application by taking a lenient view.

6. I have gone through the facts of the case. The Applicant is a foreign national, however every tourist has to comply with the laws prevailing in the country visited. If a tourist is caught circumventing the law, He must face the consequences. It is a fact that the gold was not declared by the passenger as required under Section 77 of the Customs Act, 1962, hence there was an attempt to evade duty. The Applicant is a frequent visitor to India and has visited India several times since in 2014. Being a frequent visitor he cannot hide behind the pretext that he was not aware of the Indian Custom rules. By his own admission he has submitted that the gold chain was not his personal effects, but was brought for sale in India. Thus the intentions of the Applicant are not bonafide. Under the circumstances the seized gold cannot be released for re-export. Having considered all factors, the Government is of the opinion that the confiscation of the impugned goods is justified.

7. However, the lower adjudicating authority in his findings has also observed that the Applicant is a foreign national, the gold chain was worn by the passenger and were not concealed in any manner. Applicants ownership of the gold jewelry is not disputed. The Applicant has submitted that the he was unaware of the Indian Custom laws and being misguided by a consultancy firm had brought the gold chain in place of currency for paying fees for an educational course. The department has also not investigated the reasons nor given their rational findings on the Applicants frequents visits to India. There is no doubt that the applicant has contravened the provisions of Customs Act, 1962 and rendered the seized gold liable for confiscation and the confiscation is liable to be upheld. However, in view of the above mentioned observations, the Government finds that a lenient view can be taken while imposing redemption fine and penalty.

8. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold in lieu of fine. The redemption fine imposed in lieu of the confiscation of gold totally weighing 235gms, all cumulatively valued at Rs.6,10,923/- (Rupees Sixlacs, ten thousand nine hundred and twenty three) from Rs. 2,25,000/- (Rupees Two Lakhs twenty five thousand) to Rs.

DM



1,50,000/- (Rupees One lac fifty thousand). Duty at normal rates applicable for baggage and other charges, if any shall be paid under section 125(2) of the Customs Act, 1962, as ordered by the original adjudicating authority. Government also reduces the personal penalty imposed on the Applicant from Rs. 60,000/- (Rupees sixty thousand) to Rs 40,000/- (Rupees Forty Thousand) under section 112(a) and 112(b) of the Customs Act, 1962. The penalty of Rs. 5,000/- (Rupees Five thousand) on the Applicant under Section 114 AA of the Customs Act, 1962 is reduced to Rs. 2000/- (Rupees Two thousand). The impugned order stands modified to that extent.

9. Revision application is partly allowed on above terms.

10. So, ordered.

Ashok Kumar Mehta

26.12.17

(ASHOK KUMAR MEHTA)

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

ORDER No. 23 /2017-CUS (WZ) /ASRA/MUMBAI.

DATED 26.12.2017

To,

True Copy Attested

Shri. Shri Hameed Lebbe Rifkhan.
C/o Shri N. J. Heera, Advocate,
Nulwala Building, 41, Mint Road,
Fort, Mumbai - 400 001.

SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex (RA)

Copy to:

1. The Chief Commissioner, Customs, New Customs House, Mumbai.
2. The Commissioner of Customs, C.S.I. Airport, Mumbai.
3. The Commissioner of Customs (Appeals), Mumbai -Zone III.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

