

ORDER

This Revision Application has been filed by Shri Okamura Kazua against Order in Appeal no MUM-CUSTOM-PAX-APP-393 & 394-14-15 Dt-22.09.2014 passed by the Commissioner of Customs (Appeals), Mumbai Customs - Zone III.

Brief facts of the case are as under,

2. The Applicant, Shri Okamura Kazua arrived from Tokyo via Singapore along with his wife Smt. Okamura Emiko (both holding Japanese passports) and opted for green channel of Customs for clearance. Screening of their baggage revealed some dark jewelry like objects. Hence, both of them were diverted to the red channel for a detailed examination of their baggage which resulted in recovery of gold and platinum jewelry valued at Rs 8,53,633/-. The said jewelry was seized under panchanama. After following due process the goods have been confiscated by the department and re-export has been denied. Clearance for home consumption on payment of duty has been allowed subject to payment of fine of Rs 2,50,000/- under section 125 and penalties of Rs 1,50,000/- and 20,000/- under Sections 112 (a) and (b) and 114AA respectively.

3. Aggrieved by the said order, the Applicant preferred an appeal before the Commissioner (Appeals), Mumbai pleading for re-export and reduction in fine and penalty. The Commissioner of Customs (Appeals), Mumbai Zone-III in his Order-in-Appeal no. MUM-CUSTOM-PAX-APP-393 & 394/14-15 dated 22.09.2014 held that "*going by appellant's own statement that he intended to meet various jewellers to show them the jewellery brought by him for securing orders for future, it seems highly improbable that he would not have sold the jewellery brought by him to India in this trip*". In view of above, the appeal for allowing re-export was rejected, redemption fine was reduced to Rs 1.75 lacs (Rupees one lakh seventy five thousand only) and penalty under section 112 (a) and (b) was reduced to Rs 1 lac (Rupees one lakh only).



4. Being aggrieved and dis-satisfied with the above Order in Appeal, the Applicant has filed this Revision Application on the following grounds.
- The Applicant submits that the findings and order passed by the Ld. Respondent are contrary to the law and evidence on record.
 - that the findings and order passed by the Ld. Respondent are bad in law, illegal, unjust and unfair.
 - The Ld. Respondent should have appreciated the fact that the Applicant is a Japanese National and settled there and arrived in India only for the purpose to promote his business in India along with his wife Mrs. Okamura Emiko and has brought the gold and platinum jewellery for the purpose of showing the same to some friends in India. The gold and platinum jewellery was collected by the Applicant from factories and local markets of Japan.
 - Ld. Respondent should have appreciated the fact that the gold jewellery bought by the App was not meant for sale not and was to be taken back to Japan.
 - The Ld. Respondent should have appreciated the fact that during personal hearing, the Applicant's Advocate has requested for re-export of the gold and platinum Jewelry on the ground that the Applicant is a foreign national and the Applicant has travelled India to promote business and was not very much conversant or familiar with the Indian Customs Act, 1962.
 - The Ld. Respondent further failed to appreciate that since the purpose of the Applicant's visit was not served, the rejection of re-export of gold and platinum jewellery is totally unjustified and it serves no purpose as the Applicant has already left to Japan.
 - The Ld. Respondent ought to have appreciated the fact that the Applicant is a highly educated person hailing from Japan. The Applicant has graduated from Hike Mizuno College of Jewellery and is the president of Sun Chalaine Co.Ltd.,Japan drawing salary of 6,00,000 JPY and his job is of managing, leadership, gathering information of jewellery market from either internal or external source and attended various exhibition in Hongkong and India also. The said Sun Chalaine Co. Ltd. owned by the Applicant and has staff strength



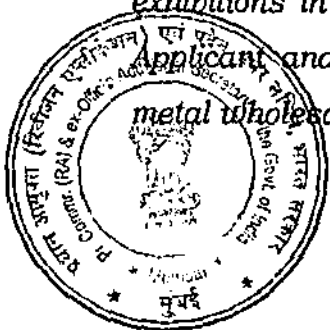
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of 15 persons and is in the business of precious metal wholesale and also engaged in import and export of precious metal from all over the world viz. Hong Kong, Korea, Indonesia, China, Italy, Russia etc and is established in the year 1983 which proves that the Applicant is not a carrier of gold jewellery but is a businessman whose interest is to promote business in India.

- h. The Ld. Respondent ought to have appreciated the submissions made by the Applicant that he had come to India for a short visit and to promote his business and he had not bought the said jewellery for the purpose of sale and had not concealed in any illegal manner the gold jewellery bought by him. In spite of the submissions of the Applicant, the excessive redemption fine of Rs.1,75,000/- and personal penalty of Rs. 1,00,000/- levied by the Ld. Respondent and denial of re-export is totally unjustified and uncalled for.
- i. The Applicant submits that in view of the above submissions the impugned order in appeal, be modified to allow re-export, with substantial reduction in redemption fine and personal penalty.

5. A personal hearing was granted to the Applicant on 04.12.2017, which was attended by the Advocate, Shri N. J. Heera. 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 reiterated the submissions filed in the grounds of Appeal and citing case laws in their written compendium they pleaded that the Revision Application be allowed by allowing re-export and reducing the redemption fine and personal penalty.

6. Government has carefully gone through the facts of the case. It is a fact that Applicant attempted to move out of the green channel and if not intercepted, he would have walked away without paying customs duty. The averments made in the grounds of the Revision Application reveal that " *the Applicant gathers information of jewellery market from either internal or external source and has attended various exhibitions in Hongkong and India. The said Sun Chalaine Co. Ltd. owned by the Applicant and has staff strength of 15 persons and is in the business of precious metal wholesale and also engaged in import and export of precious metal from all over*



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the world viz. Hong Kong, Korea, Indonesia, China, Italy, Russia etc and is established in the year 1983. Which proves that the Applicant is not a carrier of gold jewellery but is a businessman whose interest is to promote business in India." Shri Himanshu Shah, a business consultant, broker of jewelry & diamonds in his statement before the Customs authorities also asserts that " as a business acquaintance of the Applicant, he met the Applicant during his earlier visit to India at an jewelry exhibition; and the Applicant is in the business of jewelry and has come to India in order to book orders of Japanese jewelry." The above assertions indicate that the Applicant is not a tourist or a novice who has visited India for the first time. Secondly having attended exhibitions held in India earlier, and having engaged in import and export of jewelry with multiple countries would definitely have researched the business viability and profit on imports and sale of such jewelry in India. Hence, this is impossible without taking into account of the customs duty and the final cost of the jewelry imported. It therefore follows that it is not possible that the Applicant was unaware of the rules governing import of jewelry in India. Yet inspite of having dutiable goods he has opted for the green channel, this cannot be due to inadvertence and it reveals mensrea. If not intercepted he would have definitely walked away without paying customs duty. In view of these facts, the Government is of the opinion that the impugned gold is liable for confiscation and the application for re-export is rejected.

7. However, the Applicant is a foreign national. The Applicant was also the owner of the jewelry and not a carrier or short visitor. The Applicant on being enquired declared the goods and there was no attempt made to conceal the goods. In his statement under section 108 of the Customs Act, 1962, stated that the jewelry was brought by him for showing to friends in India, to promote business. Hence the Government holds that while imposing redemption fine and penalty the applicant deserves to be treated with a lenient view.

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 is reduced from Rs. 1,75,000/- (Rupees One Lakh,



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seventy five thousand) to Rs. 1,25,000/- (Rupees One Lakh, twenty five thousand). Duty at normal rates as applicable 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 under section 112(a) and (b) of the Customs Act, 1962 from Rs. 100,000/- (Rupees One lakh) to Rs 50,000/- (Rupees Fifty Thousand). The penalty of Rs. 20,000/- (Rupees Twenty thousand) on the Applicant under Section 114 AA of the Customs Act, 1962 is reduced to Rs. 10,000/- (Rupees Two thousand). The impugned order stands modified to that extent.

9. The Appeal for allowing of re-export is rejected.
10. Revision application is partly allowed on above terms.
11. So, ordered.

(Signature)
29.12.17

(ASHOK KUMAR MEHTA)

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

ORDER No. 26/2017-CUS (WZ) /ASRA/MUMBAI

DATED 29.12.2017

To,
Shri. Okamura Kazua
C/o Shri N. J. Heera, Advocate,
Nulwala Bldg., 41, Mint Road, Opp G.P.O.
Fort, Mumbai - 400 001.

True Copy Attested

(Signature)
29/12/17

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-III. Avas Corporate Point, Makwana Lane, Andheri Kurla Road, Andheri East, Mumbai 400 059.
4. Sr. P.S. to AS (RA), Mumbai.
- ✓ 5. Guard File.
6. Spare Copy.

