

371/71/B/14-RA
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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.371/71/B/14-RA/813

Date of Issue 18.01.2018

ORDER NO.27/2017-CUS (WZ) / ASRA / MUMBAI/ DATED 29.12.2017 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 : Shri. Mohd Umar Isha Salaya.

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-251 & 252/14-15 dated 08.07.2014 passed by the Commissioner of Customs (Appeals) Mumbai- Zone-III.



ORDER

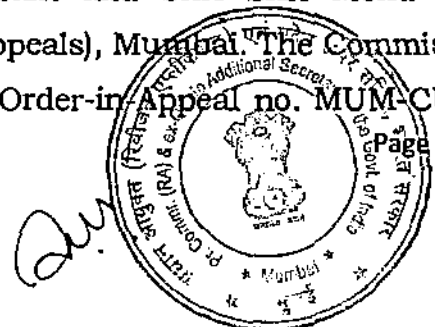
This revision application has been filed by Shri. Mohd Umar Isha Salaya against the order no MUM-CUSTM-PAX-APP-251 & 252/14-15 dated 08.07.2014 passed by the Commissioner of Customs (Appeals) Mumbai- Zone-III.

2. The facts of the case in brief are as under;

The Applicant, Shri Mohd Umar Isha Salaya, holder of Indian passport No. H9506108 who arrived from Dubai by Jet Airways Flight No. 9W 0537 on 02.07.2013 was intercepted on suspicion, while walking out through Green Channel with one zipper hand bag and one checked-in-luggage by the officers of the Air Intelligence Unit. The baggage was covered with bed-sheet found to be containing a Television set. Screening of the Television set, revealed some unusual dark images. On opening the TV set, 16 pieces of gold weighing 932 grams valued at Rs. 22,12,493/- were found concealed therein. On being asked the Applicant informed that one Shri Babubhai, Mohd Nowfal, waiting outside the Airport would recognize him by the red colour of his shirt he was wearing. The TV set was to be handed over to him. In his statement recorded under the Customs Act' 1962, Shri Modi Umar Isha Salaya stated that he was lured by the offer of one Mr. Haji in Sharjah who promised him air tickets to go home, and Rs. 2000/- but asked him to carry a TV set and hand over to Babubhai on arrival in Mumbai. Shri Mohd. Nowfal alias Babubhai was also apprehended from outside the airport.

3. The recovered gold was seized and the case was adjudicated by Additional Commissioner of Customs, C.S.I. Airport, Mumbai vide the impugned Order-in-Original who ordered absolute confiscation of the gold and imposed penalty of Rs. 3,00,000/- on the Shri Modi Umar Isha Salaya under section 112 (a) and (b) of the Customs Act, 1962 and Rs. 2,00,000/- on Shri Mohd Nowfal under section 112 (a) ibid.

4. Aggrieved by the said order, the Applicant and Shri Shri Mohd Nowfal preferred an appeal before the Commissioner (Appeals), Mumbai. The Commissioner of Customs (Appeals), Mumbai Zone-III in his Order-in-Appeal no. MUM-CUSTM-



PAX-APP-251 & 252/14-15 dated 08.07.2014 following the ratio of Supreme Court decision in Dhanak Madhusudan Ramji case, allowed redemption of confiscated goods under section 125 of Customs Act, 1962 on payment of fine of Rs. 4,50,000 (Rupees four lakhs fifty thousand only) to Shri Modi Umar Isha Salaya, being the person from whom the goods have been recovered. Having regard to the quantum of penalties levied in other similar cases, the penalty under section 112 of the Customs Act, 1962 on Shri Modi Umar Isha Salaya was reduced to Rs. 2,25,000 (Rupees two lakhs twenty five thousand only). On consideration that involvement of Shri Mohd. Nowfal was to be post-clearance as recipient of the goods, penalty imposed on him was reduced to Rs 1,00,000 (Rupees one lakh only).

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

- The Applicant had imported the gold for the first time.
- The redemption fine and penalty is on the higher side compared to the gravity of the offence committed by the Applicant.
- The Respondent has not considered the Local Market Value to substantiate the margin of profit the Applicant may be earning, before imposing heavy Redemption fine and personal penalty and taking the same into consideration is necessary before imposing the same. The Respondent ought to have taken into consideration the International Market Value (IMV) and also Local Market Value (LMV), so as to differentiate the margin of profit. In this case, there is no margin of profit as after payment of duty, there is whatsoever any margin left. Therefore the fine and penalty imposed in this particular case is very harsh and unjustified.

The Applicant submits that in view of the above submissions the impugned order in appeal, be modified with substantial reduction in redemption fine and personal penalty.

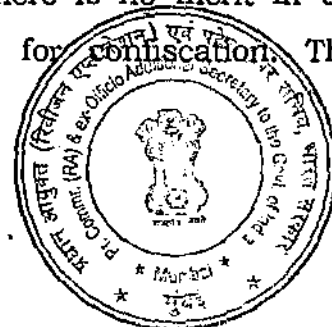
5. A personal hearing was granted to the Applicant on 04.12.2017, which was attended by the Advocate, Shri N. J. Heera. The advocate requested for an



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. The Advocate pleaded that the Revision Application be allowed by reducing the redemption fine and personal penalty.

6. I have gone through the facts of the case. The Applicant was intercepted as he tried to walk through the Green Channel on suspicion. Inspection of his baggage by the officers of the Air Intelligence Unit found a TV set, wherein 16 pieces of gold weighing 932 grams valued at Rs.22,12,493/- was found concealed. If he was not intercepted he would have walked away without paying duty. The Applicant stated that he was lured by an offer of air tickets to go home and Rs.2000/- in return for carrying a TV set. There is no doubt that the said arrangement was elaborately planned so as to evade Customs duty and smuggle gold into India. The Applicant has willingly entered into the arrangement for monetary gains. The aspect of Local Market Value and International Market Value, margin of profit etc. referred to in the ground of Application can be considered when imports have been made in a legal manner. In this case the Applicant has blatantly tried to smuggle the goods into India to evade existing custom duties. The above facts also indicate that the same modus operandi has been used earlier to evade Customs duty.

8. The applicant has contravened the provisions of Customs Act, 1962 and rendered the seized gold liable for confiscation. Further, as per the statement of Shri Mohd. Nowfal there were two passengers from whom he was to collect gold concealed in Television sets. This indicates that the may have been carried out earlier, successfully, encouraging the persons behind the act to undertake the same modus operandi on a larger scale. The intentional indigenous concealment, nondeclaration to the Customs authorities, the willingness of the Applicant to act as a carrier for monetary benefits and ineligibility of the Applicant to import the gold, justifies confiscation of the gold by the lower authority. In view of these facts, the Government is of the opinion that there is no merit in the Revision Application and the impugned gold is liable for confiscation. The Revision Application is liable for rejection.



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9. In his statement to the Customs authorities the Applicant had agreed to undertake this venture for monetary consideration. This clearly indicates that he was a willing participant in the said offence which was committed in a premeditated manner. In his customs embarkation slip, the total value of dutiable goods is left blank. Filing of true and correct declaration under the Customs Act, 1962 is an absolute and strict obligation of the importer. An incorrect declaration therefore attracts penalty on the importer irrespective of the fact whether mensrea exists or not. The above acts have thus rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962.

10. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order MUM-CUSTOM-PAX-APP-251 & 252/14-15 dated 08.07.2014 passed by the Commissioner of Customs (Appeals), Mumbai-Zone-III is upheld.

11. Revision application is dismissed.

12. So, ordered.

Ashok Kumar Mehta
29.12.17

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 27/2017-CUS (WZ) /ASRA/MUMBAI

DATED 29.12.2017

To,

Shri. Mohd Umar Isha Salaya.
TA Khambhaliya Jamnagar,
Gujarat - 361 310.

True Copy Attested

Sankarsan Munda
29/12/17
SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

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 E, Mumbai 400 059.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

