



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. **371/77/B/14-RA & 371/76/B/14-RA** : Date of Issue 25.11.2021
16814

ORDER NO. 293-294 /2021-CUS (SZ)/ASRA/MUMBAI
DATED 22.11.2021 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.

F.No. : 371/77/B/14-RA

Applicant : Shri. Dilip Sontakey

Respondent : Commissioner of Customs, CSI Airport, Mumbai : 400 099

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-344 & 345/14-15 dated
28.08.2014 [F.No. S/49-579 & 580/2013 AP] passed by
the Commissioner of Customs (Appeals), Mumbai - III.

F.No. : 371/76/B/14-RA

Applicant : Shri. Jayshree Dilip Sontakey

Respondent : Commissioner of Customs, CSI Airport, Mumbai, 400 099.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-344 & 345/14-15 dated
28.08.2014 [F.No. S/49-579 & 580/2013 AP] passed by
the Commissioner of Customs (Appeals), Mumbai - III.

ORDER

These two revision applications have been filed by Shri. Dilip Sontakey and Smt. Jayshree Dilip Sontakey (herein referred to as Applicants or Applicant No. 1 & Applicant No. 2, respectively) against the Order-in- Appeal No. MUM-CUSTOM-PAX-APP-344 & 345/14-15 dated 28.04.2014 [F.No. S/49-579 & 580/2013 AP] passed by the Commissioner of Customs (Appeals), Mumbai – III.

2. Brief facts of the case are that the applicants (who are husband and wife and American Citizens), had arrived at CSI, Airport, Mumbai on 09.03.2012, from Los Angeles via London by British Airways flight No. BA 199. Both had opted for the Green Channel of Customs for clearance of their baggage. They were intercepted by the Officers of Customs. On screening of their checked-in baggage and hand bags, dark images were noticed. On noticing some suspicious items such as Gold jewellery and watches etc, the applicants were diverted to Red Channel for detailed examination. The passengers were asked whether they were carrying any dutiable items either in their hand baggages and or in their checked in baggages or any precious items to which they replied in negative. Detailed examination of their person and eight pieces of checked-in bags, two trolley hand bags, two computer hand bags and two purses resulted in the recovery of 10 high end wrist watches, assorted jewellery studded with diamonds and precious stones, which had been kept concealed among toiletries in their baggage's and hand bags. INR 76,000/- were also recovered from one of the toiletry kits kept in one of the hand bags. Further, personal search of applicant (i.e. Shri Dilip Sontakey) resulted in the recovery of US\$ 11,100 and diamond studded costly wrist watches. The list of the high end diamond studded jewellery and high end branded wrist watches was quite exhaustive and the same were recorded in the Annexure I, Annexure II, and Annexure III of the panchanama drawn. The goods mentioned in the panchanama were seized under the reasonable belief that the same were attempted to be smuggled into India in contravention of the provisions of the Customs Act, 1962 and were therefore, liable to confiscation under the provisions of the Customs Act, 1962. The goods mentioned in the panchanam had a provisional value of Rs. 1,93,85,000/- i.e USD 388,000/- besides the seized Indian Currency and foreign currency.

3. After the due process of law wherein detailed investigations were carried out and recording of statement of the applicants, valuation, issuance of SCN etc, the case was adjudicated by the Addl. Commissioner of Customs, CSI Airport, Mumbai who vide the Order-in-Original No. ADC/AS/ADJN/01/2013-14 dated 05.04.2013 [F.No. SD/INT/AIU/UNI/29/2012 AP 'A' : S/14-05-47/2012-13 ADJN] ordered for the (a). confiscation of the dutiable goods valued at Rs. 1,59,48,606/- , Foreign Currency valued Rs 5,43,900/- under section 111(d), (1) and (m) of the Customs Act, 1962 and allowed for the re-shipment within thirty days of all the dutiable goods and currency on payment of fine of Rs 30,00,000/- (Rs Thirty Lakhs only) under Section 125 of Customs Act, 1962, (b). absolute confiscation of Indian currency of Rs 76000/- under section 113(h) and (i) of the Customs Act, 1962, (c). imposed a penalty of Rs 7,50,000/- (Rs Seven Lakh fifty thousand only) on applicant (i.e. Shri Dilip K Sontakey) under Section 112 (a) and (b) of the Customs Act, 1962, (d). imposed a penalty of Rs 50,000-(Rs Fifty thousand only) on applicant (i.e. Shri. Dilip K Sontakey) under Section 114 and 114AA of the Customs Act, 1962, (e). imposed a penalty of Rs 7,50,000/- (Rs Seven Lakh fifty thousand only) on applicant (Smt. Jayashree Sontakey) under Section 112 (a) and (b) of the Customs Act, 1962 and (f). imposed a penalty of Rs Rs 50,000/-(Rs Fifty thousand only) on applicant (Smt. Jayashree Sontakey) under Section 114 and 114AA of the Customs Act, 1962.

4. Aggrieved with the Order-in-Original, both the applicants and the department filed appeals before the appellate authority, who vide the appellate order no. MUM-CUSTM-PAX-APP-344 & 345/14-15 dated 28.08.2014 [F.No. S/49-579 & 580/2013 AP] dismissed the appeals filed by the applicants and department.

5. Aggrieved with the Order-in-Appeal, the applicants have filed a revision application on the grounds;

5.1. that the fine and penalty imposed by both the lower authorities was unjust and harsh and ought not to have imposed any fine and penalty.

- 5.2. that the appellate authority ought to have appreciated that the Adjudicating Authority had observed and accepted that the investigations had not established that the impugned jewellery and watches were new, but used jewellery and used watches i.e. used personal effects and inspite of the same, the Adjudicating Authority had imposed a heavy and excessive fine of Rs. 30,00,000/- (Rupees Thirty Lakhs) and heavy and excessive penalty of Rs. 8,00,000/- (Rupees Eight Lakhs) on each of them.
- 5.3. that the appellate authority and the adjudicating authority had after considering the status, profile, earning etc of the applicant had accepted that they had come to India for a long vacation of 3-4 months and that the applicant had brought the jewellery for use in engagement / marriage of their daughter who did get married and inspite of the same, the adjudicating authority had imposed a heavy and excessive fine of Rs. 30,00,000/- (Rupees Thirty Lakhs) and heavy and excessive penalty of Rs. 8,00,000/- (Rupees Eight Lakhs) on each of them.
- 5.4. that the appellate authority had accepted that the impugned goods had not been concealed and inspite of the same, the Adjudicating Authority had imposed a heavy and excessive fine of Rs. 30,00,000/- (Rupees Thirty Lakhs) and heavy and excessive penalty of Rs. 8,00,000/- (Rupees Eight Lakhs) on each of them.
- 5.5. that the lower authorities after taking into account the entire facts of the case and the investigations carried out by the Customs department had accepted that the Applicants were not carriers and the impugned goods were not meant for sale inspite of the same, the adjudicating authority had imposed a heavy and excessive fine of Rs. 30,00,000/- (Rupees Thirty Lakhs) and heavy and excessive penalty of Rs. 8,00,000/- (Rupees Eight Lakhs) on each of them.
- 5.6. that the appellate authority had accepted that there was no intention on the part of the Applicants to evade customs duty and inspite of the same the Adjudicating Authority had imposed such a heavy and excessive collective fine of Rs. 30,00,000/- (Rupees Thirty Lakhs) and heavy and excessive collective penalty of Rs. 8,00,000/- (Rupees Eight Lakhs) and the Ld. Respondent has confirmed the said Adjudication Order.
- 5.7. that the appellate authority had failed to appreciate that the applicants together were permitted to carry USD 10,000/- i.e. US\$ 5000 each and that only USD 1,100 was excess for which they had given a valid

explanation. The applicants have contended that no penalty ought to have been imposed on them.

- 5.8. that the appellate authority had failed to appreciate that the amount of Indian currency recovered was only Rs. 76,000/-, while the Adjudicating Authority had imposed a penalty of Rs. 50,000/- u/s 114 and 114AA of the Customs Act, 1962, each on the applicants and taken together i.e Rs. 1,00,000/- was very high and excessive. The recovery of Indian currency had been satisfactorily explained by the applicants there was no need to impose any penalty in this regard.
- 5.9. that the appellate authority had failed to appreciate the various case laws cited by the applicants which were squarely applicable to their case.
- 5.10. that the lower authorities had come to the conclusion that goods brought by the applicants was for use in India and were meant to be taken back to USA in course of return journey and thus, the fine and penalty was unjustified and deserved to be set aside.

Applicant has prayed that (a). the impugned ORDER-IN-APPEAL NO. MUM-CUSTM PAX-APP-344 & 345/14-15 DT. 28-08.2014 passed by the appellate authority be set aside; (b). that the fine imposed may be set aside; (c). that the penalty imposed be set aside & (d). that further orders as deemed fit and proper in the facts and circumstances of the case may be passed.

6.1 Personal hearings in the case was scheduled for 26.04.2018, 12.07.2018. After change of the revisionary authority, personal hearing through the video conferencing online mode was scheduled for 20.10.2021 / 26.10.2021. Both the applicants appeared online and on 26.10.2021 and submitted that jewellery was brought for personal use and the same was to be taken back to USA. The applicants submitted that they are genuine passengers who were not aware of the rules in this regard. They requested to clear their names.

6.2. The applicants through their Advocates furnished further written submission on 26.10.2021 wherein besides reiterating their earlier submissions stated that the valuer in his report had highlighted that most of the jewellery contained dust particles which indicated that the jewelery containing diamonds were used items. Applicants stated that some of the jewellery had been purchased ten years back and that the purpose of bringing them to India was to wear in some functions. Also,

the applicants have relied on the judgement passed by the Hon'ble Supreme Court of India in case of Directorate of Revenue Intelligence V/s. Ms. Pushpa Lekhumal Tolani [2017 (353) E.L.T 129 (S.C)] and reiterated to set aside the Order-In-Appeal, redemption fine and penalties.

7. The Government notes that the Applicants had arrived with copious number of baggage i.e. 8 pieces of checked-in-bags, 2 trolley hand bags, two computer hand bags etc and had opted for the green channel. They were carrying large quantity of high end diamond studded jewellery, high end branded watches, foreign currency, Indian currency etc and had failed to declare the same to the Customs. Government notes that the applicants were asked whether they were carrying any dutiable items either in their hand baggage or in their checked in baggage or any precious items to which they had replied in the negative. Government notes that even at the last moment, an opportunity was given to the applicants to declare their goods. However, they had not availed the opportunity and had failed to declare the goods. As the Applicants had not declared their goods i.e. jewellery, watches etc to Customs and a declaration as required under section 77 of the Customs Act, 1962 had not been submitted, therefore, Government finds that the confiscation of the high end diamond studded jewellery and high end watches, Indian currency etc is justified.

8. The Government has carefully gone through the Order-in-Original dated 05.04.2013 and notes that the adjudicating authority had empathetically considered (a) the submissions made by the applicants, (b) the statements given by the applicants (c) their social and financial status, (d) the purpose of their visit to India, (e) invoices submitted by the applicants, (f) the goods not being new, (g) applicants not being carriers, (h) goods not brought for sale in India etc and thereafter, passed a judicious and balanced order wherein allegations of concealment, deliberate action, evasion of duty etc have been deliberated and benefit of doubt is given to the applicants. The paras from 50 to 63 in the Order-in-Original dated 05.04.2013 comprehensively cover all these aspects. In the subsequent paras i.e. paras 64 to 68, the adjudicating authority has analysed the facts with the provisions of law and thereafter, held that since the applicants had not made a true and factual declaration as required in terms of Section 77 of the Customs Act, 1962 their actions had rendered the impugned goods liable for

confiscation under the provisions of Section 111(d), (l), and (m) of the Customs Act, 1962 and consequently, liable for penal action under Section 112(a) and (b) of the Customs Act, 1962. Thereafter, the goods were allowed for re-export on payment of a reasonable fine. The appellate authority after deliberating numerous case laws on the subject, has upheld the order of the adjudicating authority. Government too finds no infirmity in the orders passed by the lower authorities as far as it relates to redemption fine and is inclined to accept the same.

9. The applicants have pleaded that the fine and penalty imposed is excessive and high and have prayed for setting aside the order of the appellate authority. The Government notes that the status and affluence of the applicants have been discussed by the lower authorities in their orders. The fact remains that the applicants were carrying large quantities of jewellery studded with precious stones and high end branded watches. They have taken the plea that because of their status they sport such costly jewellery which was normal and usual to them and thus they had brought the same to India and all along they had an intention to take it back. The applicants though American Citizens, are people of Indian Origin and are aware of the laws prevalent in India. Due diligence of the law prevalent in the country should have been taken by them when entering the country. Only when they were intercepted, the applicants took the excuse of ignorance of law which can not be sufficient for ignoring the fact of non declaration of gold jewellery and watches. There are a plethora of judgements on the issue that ignorance of law is not an excuse. The Government is not inclined to consider the prayer of the applicants as the same is devoid of any merits.

10. Government notes that the confiscation of the Indian Currency and consequent penalty imposed under Section 114 and Section 114AA of the Customs Act, 1962 is correct and appropriate.

11. The applicants have relied upon the judgement of the Hon'ble Supreme Court of India in the case of Directorate of Revenue Intelligence V/s. Ms. Pushpa Lekhumal Tolani as reported in 2017 (353) E.L.T 129 (S.C). At para 13 of the said judgement, the Apex Court has held that '..... However, it is made clear that the

present conclusion is confined only to the disposal of this appeal. Hence, this judgement cannot be taken as precedent.

11. The Government finds that the fine and penalties imposed on the applicants are commensurate with the omissions and commissions committed and does not find it necessary to interfere in the orders passed by the lower authorities.

12. The Revision Applications are accordingly, dismissed.

Shrawan
22/11/2021
(SHRAWAN KUMAR)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. *293-294*/2021-CUS (SZ) /ASRA/

DATED *22.11.2021*

To,

1. Shri. Dilip K. Sontakey, D/8, Vittal Homes, 31, Hindustan Colony, Amrawati Road, Nagpur.
2. Shri. Dilip K. Sontakey, D/8, Vittal Homes, 31, Hindustan Colony, Amrawati Road, Nagpur.
3. Commissioner of Customs, Chhatrapati Shivaji International Airport, Mumbai - 400 099.

Copy to:

1. Advani Sachwani & Heera Advocates, Nulwala Building, 41, Mint Road, Opp. GPO Fort, Mumbai - 400 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File,
4. File Copy.
5. Notice Board.