



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No. 371/324/B/WZ/2018-RA / 6168 : Date of Issue 01/11/2022

ORDER NO. 313/2022-CUS (WZ) /ASRA/MUMBAI DATED 31.10.2022 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 : Shri. Abdul Nizar Abdul Khader

Respondent : Pr. Commissioner of Customs (Airport), CSI, Mumbai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-646/2018-19 dated 25.10.2018
[F.No. S/49-204/2016] passed by the Commissioner of
Customs (Appeals), Mumbai – III.

ORDER

This revision application has been filed by Shri. Abdul Nizar Abdul Khader (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-646/2018-19 dated 25.10.2018 [F.No. S/49-204/2016] passed by the Commissioner of Customs (Appeals), Mumbai - III.

2. Brief facts of the case are that on 28.05.2015, the Officers of Customs had intercepted the Applicant at CSMI Airport where he had arrived from Dubai by Emirates Flight No. EK 508 dated 28.05.2015. The Applicant had been intercepted near the exit gate after he had cleared himself through the green channel of Customs. To the query put forth to him regarding possession of any dutiable goods, he had replied in the negative. The applicant was asked to pass through the door frame metal detector which indicated presence of metal on his person. During personal search of the Applicant, 28 gold bars having foreign markings, of 10 tolas each, of 999.0 purity were recovered which had been wrapped with black coloured adhesive tapes and clever concealed in the pockets of the jeans pants worn by him. The 28 FM gold bars totally weighed 3264 gms were provisionally valued at Rs. 83,53,033/-. Later, the said weight, purity and value of the 28 FM gold bars were confirmed by the Government Approved Valuer who had examined the same.

3. After due process of investigations and the law, the Original Adjudicating Authority i.e. the Addl. Commissioner of Customs, CSI Airport, Mumbai, vide Order-In-Original No. ADC/RR/ADJN/326/2015-16 dated 10.02.2016 [F.No. S/14-5-314/2015-16 Adjn / SD/INT/AIU/230/2015 AP 'B'] ordered for the confiscation of the 28 gold bars having markings 'MWG U.A.E 10 TOLAS 999.0 MELTER ASSAYER', totally weighing 3264 gms and valued at Rs. 83,53,033/- under Section 111 (d), (1) and (m) of the Customs Act, 1962. However, option to redeem the goods on payment of a fine of Rs. 19,50,000/- was granted to the applicant under Section 125(1) of the Customs Act, 1962 alongwith payment of applicable duty and other charges as per Section 125(2) of the Customs Act, 1962. Further, a penalty of Rs. 8,50,000/- was imposed on the applicant under Section 112 (a) and (b) of the Customs Act, 1962.

4. Aggrieved by this Order, the applicant preferred an appeal before the appellate authority i.e. Commissioner of Customs (Appeal), Mumbai – III, who vide Order-in-Appeal No. MUM-CUSTOM-PAX-APP-646/2018-19 dated 25.10.2018 [F.No. S/49-204/2016] did not find it necessary to interfere with the impugned OIO. A perusal of the OIA reveals that the appeal had been filed only on the limited issue of reduction in fine and penalty.

5. Aggrieved by this Order, the applicant has filed this revision application on the undermentioned grounds of revision;

5.01. that the order passed by the appellate authority was bad in law and unjust; that the OIA has been passed without due consideration to the documents on record and facts of the case; that the goods were neither restricted nor prohibited was not appreciated by the AA; that no previous case has been registered against applicant; that RF imposed should be to the extent of the difference between the CIF and Market value of the goods; that no margin of profit was left after payment of 36.05% duty; that before imposing the heavy fine the conveyance cost etc has not been factored.

The applicant has prayed that the order passed by the adjudicating authority may be set aside as far as RF is concerned which may be reduced substantially. Applicant has also prayed for reduction in the personal penalty imposed on him or pass any order as deemed fit.

6. Personal hearing in the case was scheduled through the online video conferencing mode for 02.08.2022. Shri. N.J Heera, Advocate for the applicant appeared for personal hearing and submitted that RF and penalty imposed are high. He requested to reduce the same and allow their applications.

7. The Government has gone through the facts of the case. The applicant was carrying a large amount of gold bars which had been concealed and not declared to the Customs Authority. Government notes that the OAA while confiscating the goods had allowed the same to be redeemed on payment of a fine and penalty too had been

imposed. On the limited issue of reduction in the RF and penalty, the applicant had filed an appeal before the AA who did not find it necessary to interfere in the case.

8. In the ground of appeal filed before the Revisionary Authority, the applicant has made an averment that no previous case has been registered against him. Government notes from the records that revision order no. 47/2020-CUS(SZ) ASRA Mumbai dated 10.05.2020 in F.No. 373/176/B/2016 has been passed against Shri. Abdul Nizar Abdul Khader pertaining to OIA of Commissioner of Customs (Appeals), Bangalore. Though this case is subsequent, it indicates that the applicant is a habitual offender.

9. Government notes that the AA has considered the issue of reduction in the RF and personal penalty and has dealt with the same at length. Thereafter, the AA found that it was not necessary to interfere with the order passed by the OAA. Government finds that the order passed by the AA on the limited issue of reduction of RF and penalty is legal and proper and does not find it necessary to interfere in the same.

10. Accordingly, the Revision Application filed by the applicant is dismissed.



(SHRAWAN KUMAR)

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

ORDER No. 313 /2022-CUS (WZ) /ASRA/ DATED 31.10.2022

To,

1. Shri. Abdul Nizar Abdul Khader, House No. IV/409, K.A.S House, Kumbla Post, Kasargod, Kerala – 671 321.
2. Pr. Commissioner of Customs, CSI Airport, Terminal – 2, Mumbai : 400 099.

Copy to:

1. Shri. N.J Heera, Advocate, Nulwala Bldg, Ground Floor, 41, Mint Road, Opp. GPO, Fort, Mumbai – 400 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.