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SPEED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No. 371/55/B/2017-RA(Mum) / 1304

Date of Issue 24.02.21

ORDER NO. 38/2021-CUS (WZ)/ASRA/MUMBAI DATED 16.02.2021 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.

Applicant : Shri Mansur Mohd. Haroon Gulam Moh.

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

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-000-APP-01/2017-18 dated 04.04.2017 passed by the Commissioner of Customs (Appeals), Mumbai-Zone III.



ORDER

This revision application has been filed by Shri Mansur Mohd. Haroon Gulam Moh. (herein after referred to as the Applicant) against the Order in appeal No. MUM-CUSTOM-000-APP-01/2017-18 dated 04.04.2017 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

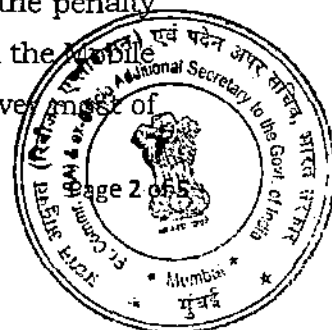
2. Briefly stated the facts of the case are that Shri Mansur Mohd. Haroon Gulam Moh. arrived at the Mumbai airport from Addis Ababa on 04.10.2015. He had opted for the green channel and did not declare the goods brought by him. He was intercepted by the officers of the Air Intelligence Unit and examination of his baggage resulted in the recovery of three gold coins totally weighing 93.3 grams and valued at Rs. 2,27,120/- and 27 I-phones totally valued at Rs. 10,95,465/-. All the phones were old and used and not in their original packings.

3. The Original Adjudicating Authority vide Order-In-Original No. Air Cus/49/T2/537/2015 Batch 'C' dated 03.11.2015 ordered confiscation of the impugned goods, but allowed redemption of the gold coins on payment of a fine of Rs. 50,000/- (Rupees Fifty thousand). The 27 I-phones were confiscated absolutely. A penalty of Rs. 1,25,000/- (Rupees One Lac Twenty five thousand) was imposed under Section 112 (a) & (b) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. MUM-CUSTOM-000-APP-01/2017-18 dated 04.04.2017 rejected the appeal.

5. Aggrieved with the above order the Applicant, has filed this revision along with an application for condonation of delay of 55 days as he was unwell, interalia on the grounds that;

5.1 As per the Latest amendment in Section 129 of C.A. 1962, the appellant encloses herewith the receipt of the pre-deposit of the penalty of Rs.9375/- (i.e.7.5% of the total penalty of Rs.125000/-). All the Mobile phones have been confiscated absolutely in this case. Moreover, most of the Mobile phones were 2nd hand & used ones.



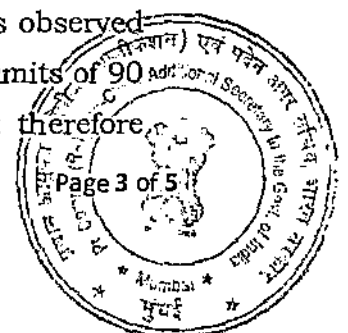
5.2 The Applicant humbly submits that he is not a frequent traveler & this is the 1st time he had brought only 3 Gold coins & some used Mobile phones. The order of absolute confiscation of the M. phones have injured his feelings. However the applicant has abandoned all the used mobile phones to the Govt. of India, as the values of the mobile phones have been taken on the higher side. The Applicant is a man of means & earning good income & commands good respect in the society & therefore it is bellow his dignity to misuse Baggage Rules by allegedly bringing the goods for somebody else as wrongly alleged in the Order. The imposition of R/F of Rs.50,000 - in addition to duty on only 3 Gold coins were also not justified. The Appellant has not been able to clear the Gold due to imposition of heavy fine. Hence on this count also the R/F of Rs.50,000/- deserves to be set aside or atleast drastically reduced in the interest of justice

5.3 The Applicant therefore hopes that he would not be denied the justice at your honour's hands and after perusing the records of the case, he would be given the benefit of doubt and he would be exonerated of all charges and allegations by Your Honour. The Appellant was not a carrier for somebody else but he was the actual owner of all the goods & he had not implicated anybody in any manner whatsoever.

5.4 The Applicant prayed for release of the confiscated gold coins only on payment of duty. The redemption fine of Rs. 50,000/- and P.P of Rs. 1,25,000/- be ordered to be waived.

6. A personal hearing in the case was scheduled on 22.12.2020. Smt. Regina P. Mangalathi, Superintendent and Shri Surendra G. Pathrabe, Preventive officer attended the hearing on behalf of the respondents. Shri Omprakash Rohira, Advocate appeared online on behalf of the Applicant and submitted that he had abandoned the mobile phones and further submitted that redemption fine and penalty be reduced /waived in the interest of justice.

7. The Government has gone through the facts of the case. It is observed that the Revision Application has been filed within the condonable limits of 90 days on the ground that the Applicant was unwell. Government therefore



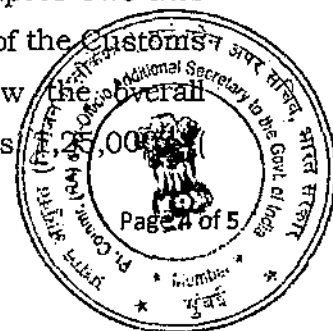
~~condones the delay and proceeds to decide the case on merits. The facts of the~~
 case bring out that the Applicant was intercepted at the green channel and examination of his baggage resulted in the recovery of three gold coins totally weighing 93.3 grams and valued at Rs. 2,27,120/- and 27 I-phones totally valued at Rs. 10,95,465/-. All the phones were old and used and not in their original packings, however they were in commercial quantity.

8. Government notes that the original adjudicating authority in the brief facts of the case has observed that the import of second hand mobile phones as per para 2.31 of the Foreign Trade Policy are restricted, and has ordered absolute confiscation of the impugned mobiles. Gold weighing 93.3 gms, valued at Rs. 2,27,120/- was also confiscated. The original adjudicating authority has however, using the discretion accorded under section 125 of the Customs Act, 1962, allowed the gold to be redeemed on payment of redemption fine.

9.1 The Applicant in his revision application has stated that he has abandoned the Mobile phones and has not pleaded for its redemption. He has also not redeemed the gold coins due to imposition of heavy fine and penalty, and has prayed for reduction of the same. Government observes that the gold coins carried by the Applicant were not ingeniously concealed. The Applicant is the owner of the gold and is not a carrier, nor is there any allegation that he is an habitual offender. The quantity of gold under import is 93.3 gms and not commercial in nature.

9.2 The original adjudicating authority has categorically stated that the impugned I-phones were all old and used, however the valuation of the phones has been done as per the international value of such new phones. These phones have been abandoned by the Applicant. Taking these facts into consideration the Government is of the view that the penalty imposed requires reconsideration and is therefore inclined to take a reasonable view in the case.

10. The redemption fine of Rs. 50,000/- (Rupees Fifty thousand) imposed in lieu of confiscation on the gold valued at Rs. 2,27,120/- (Rupees Two lacs Twenty thousand One hundred and twenty) under section 125 of the Customs Act, 1962 is appropriate. The Government keeping in view the overall circumstances of the case, reduces the penalty imposed from Rs.



~~Rupees One lac Twenty five thousand) to Rs. 50,000/- (Rupees Fifty thousand)~~
under section 112(a) of the Customs Act,1962.

11. The impugned Order is modified as detailed above. Revision Application is partly allowed.

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10/02/21

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

ORDER No.38/2021-CUS (WZ) /ASRA/

DATED 02.02.2021

To,

1. Shri Mansur Mohd. Haroon Gulam Moh., C/o Shri M. G. Rohira, Advocate,
148/5, Uphaar, 10th Road, Khar (W), Mumbai - 400052.

Copy to:

1. The Pr. Commissioner of Customs, CSI Airport, Sahar, Andheri, Mumbai.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File. ,
4. Spare Copy.

ATTESTED

अधीक्षक
Superintendent
रिवीजन एप्लीकेशन
Revision Application
मुंबई इकाई, मुंबई
Mumbai Unit, Mumbai

