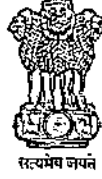


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
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Mumbai-400 005

F.No. 371/41/B/15-RA / 1638

Date of Issue 03.03.2021

ORDER NO. 41/2021-CUS (WZ)/ASRA/MUMBAI DATED 26.02.2021 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 Aneesur Rehman

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-PAX-APP-690/14-15 dated 10.03.2015 passed by the Commissioner of Customs (Appeals), Mumbai-III.

ORDER

This revision application has been filed by Shri Aneesur Rehman (herein referred to as Applicant) against the Order in Appeal No. MUM-CUSTOM-PAX-APP-690/15-16 dated 10.03.2015 passed by the Commissioner of Customs (Appeals), Mumbai- Zone-III.

2. The Officers of Customs intercepted the Applicant at the CSI Airport, Mumbai on 10.12.2013 after he had cleared himself through the green channel. He was scanned using a handheld scanner which indicated the presence of metal. Examination of his person resulted in the recovery of two gold bars of 1 kg each from the pockets of the pants worn by the him. A total of 2 kg gold bars valued at Rs. 59,44,000/- (Rupees Fifty nine lakhs Forty four thousand) was recovered from the Applicant along with invoice bills for purchase of the gold. The Applicant in his statement stated that the gold bars were given to him by his elder brother Shri Shamsuddin to hand over the same to his wife in Mangalore. Statement of Shri Shamsuddin Melmane Ahmed was also recorded and he confirmed that he is the owner of the gold.

3. The Original Adjudicating Authority vide its Order-In-Original No. ADC/ML/ADJN/72/2014-15 dated 30.09.2014 ordered confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962, but allowed redemption of the same on payment of a redemption fine of Rs. 12,00,000/- (Rupees Twelve lacs) and imposed penalty of Rs. 5,00,000/- (Rupees Five lacs) on the Applicant and Rs. 1,00,000/- (Rupees One lakh) on his brother, Shri Shamsuddin Melmane Ahmed, who had given him the gold, under Section 112 (a) and (b) of the Customs Act, 1962.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals), contending that he was an eligible passenger to import gold at concessional rate of duty, and that he pleaded for reducing the fine and penalty imposed, as the same authority had imposed fine of Rs. 10,00,000/- on another passenger who arrived on the same flight with the same amount of gold of identical value. The Commissioner (Appeals) vide his order No. MUM-CUSTOM-PAX-APP-

690/14-15 dated 10.03.2015 reduced the redemption fine to Rs. 10,00,000/- (Rupees Ten lacs) and rejected the rest of the appeal.

5. Aggrieved with the above order the Applicant, has filed this revision application along with a condonation of delay of 20 days interalia on the grounds that;

- 5.1 The Applicant is a Non-resident Indian.
- 5.2 The Applicant is eligible to import 5 kgs of Gold (1kg on concessional rate)
- 5.3 The gold brought in by the Applicant was not concealed.
- 5.4 The Applicant brought in the said goods, for the first time.
- 5.5 The violation, if any is technical in nature.
- 5.6 The fine and personal penalty imposed on the Applicant is very high, considering the eligibility and after payment of duty no margin of profit is left; therefore the heavy fine & penalty imposed on Applicant is unjustified.
- 5.7 The Applicant craves to add or delete any ground of Appeal or produce any document/ judgement before of during the personal hearing.
- 5.8 The Applicant prayed for reduction of the fine and personal penalty.

7. Personal hearings in the case was scheduled in the case on 24.10.2018, 19.09.2019, 16.10.2019. In view of the change in Revisionary authority, another opportunity of personal hearing was extended on 09.12.2020, 16.12.2020, 23.12.2020 and 05.02.2021. Nobody attended the hearing on behalf of the department. The Advocate for the Applicant, Shri N. J. Heera attended the personal hearing on 05.02.2021. He re-iterated the submissions already made in the revision application and requested for reduction of redemption fine and penalty.

8. The Government has gone through the facts of the case. The Revision Application has been filed after a delay of 20 days, but within the condonable limits of 90 days. As it is within condonable limits, Government finding the grounds of delay reasonable, condones the delay and proceeds to decide the case on merits.

9. The facts of the case state that the Applicant was intercepted after the officers detected the presence of metal on the person of the Applicant after he was scanned using a handheld scanner. When questioned the Applicant stated that he had nothing to declare and produced a blank Customs Declaration form certifying that he was not carrying anything dutiable. The personal examination resulted in the recovery of two gold bars weighing 2 kilograms from the pocket of his pants, valued at Rs. 59,44,000/- (Rupees Fifty nine lacs Forty four Thousand). The Applicants did not declare the gold as required under section 77 of the Customs Act, 1962, and he had used the green channel meant for passengers not having anything to declare. The confiscation of the gold is therefore justified and the Applicant has rendered himself liable for penal action.

10. The investigations of the case revealed that the gold belonged to Shri Samsuddeen Melmane Ahmed, the brother of the Applicant, who is an NRI and had purchased the impugned gold from his earnings saved from the salary he earned in Saudi Arabia. The gold was recovered from the pant pockets of the Applicant and it was not ingeniously concealed. The ownership of the gold is not disputed. There are no allegations that the Applicant is a habitual offender. The Original adjudicating authority has allowed the gold totally valued at Rs. 59,44,000/- (Rupees Fifty nine lakhs Forty four thousand) to be redeemed on payment of redemption fine of Rs. 12,00,000/- (Rupees Twelve lacs) under section 125 of the Customs Act, 1962, and imposed penalty of Rs. 5,00,000/- (Rupees Five lakhs) on the Applicant and Rs. 1,00,000/- (One lakh) on his brother, Shri Shamsuddin Melmane Ahmed. The Appellate authority observing that, lesser redemption fine has been imposed in a case involving import of identical quantity of gold, and noting that the order of the Original adjudicating authority does not mention any distinguishing fact for imposing higher fine, has reduced the redemption fine to Rs. 10,00,000/- (Rupees Ten lakhs). Government is not inclined to contest the conclusions of these lower authorities.

11. The Applicant has pleaded for reduction of redemption fine and penalty. The Government, keeping in mind the facts of the case observes that the redemption fine and penalties imposed are appropriate. The submissions of the Applicant in the revision application also do not justify a reduction in

redemption fine and penalty. The Government therefore is not inclined to interfere in the Appellate order on this aspect. The revision application is therefore liable to be dismissed.

12. The Revision Application is accordingly dismissed.

Shrawan
26/2/21
(SHRAWAN KUMAR)

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

ORDER No. 41/2021-CUS (WZ) /ASRA/

DATED 26.02.2021

To,

Shri Aneesur Rehaman, Melmane House, Misar Post, Badaga Mijar village,
Karkala Talika, Bangalore, Dakshin Kannad- 574225.

Copy to:

1. The Pr. Commissioner of Customs, CSI Airport, Sahar, Mumbai.
2. Shri N. J. Heera, Advocate, Nulwala Building, 41 Mint Road, Fort, Mumbai 400 001.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File. ,
5. Spare Copy.