

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

F.No. 371/02/B/15-RA/5924

Date of Issue (21/02/19)

ORDER NO. 19/2019-CUS (WZ) / ASRA / MUMBAI/ DATED 20.09.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Vicky Jhamatmal Sajnani

Respondent : Principal Commissioner of Customs (Airport), Mumbai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM- CUSTM-PAX-APP-333 & 334/14-15 Dated 01.09.2014 passed by the Commissioner of Customs (Appeals), Mumbai - III.

ORDER

This revision application has been filed by Shri Vicky Jhamatmal Sajnani, (herein referred to as Applicant) against the Order in Appeal No. MUM-CUSTOM-PAX-APP-333 & 334/14-15 Dated 01.09.2014 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. On 22.10.2012 the Applicant arrived at the CSI Airport from Dubai. Acting on intelligence the Officers of AIU intercepted him after he had crossed the green channel. Examination of his person resulted in the recovery of five gold pendants from the front pocket of his jeans, Rs. 30,000/- Indian rupees and was wearing a brand new rolex watch on his left hand. The five gold pendants weighing 120 gms and valued at Rs.2,74,320/- (Rupees two lacs Seventy four thousand three hundred and twenty), The Rolex watch was valued at Rs. 5,85,200/- (Rupees Five lakhs Eighty five thousand Two hundred).

3. After due process of the law vide Order-In-Original No. ADC/ML/ADJN/35/2013-14 dated 30.10.2013 the Original Adjudicating Authority ordered confiscation of the gold pendants, Rolex watch and the Indian currency totally valued at Rs. 8,67,710/- (Rupees Eight lakhs Sixty seven thousand Seven hundred and ten) under Section 111 (d) (l) and (m) of the Customs Act, 1962 and allowed redemption on payment of Rs. 1,50,000/- under section 125 of the Customs Act,1962 and imposed penalty of Rs. 1,00,000/- under Section 112 (a) of the Customs Act,1962. A penalty of Rs. 10,000/- under Section 114AA was also imposed on the respondent.

4. Aggrieved by the said order, the respondent filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal MUM-CUSTOM-PAX-APP-333 & 334/2014-15 Dated 01.09.2014, observed that the redemption fine and the penalty imposed to be appropriate and rejected the appeal of the respondent.

5. Aggrieved with the above order the Applicant has filed this revision application inter alia along with a condonation of delay of twenty seven days on the grounds that;

5.1 The Applicant is a NRI and resides abroad and therefore could not file the revision application on time and refusing to condone the delay may result

in a meritorious matter being thrown out and the cause of justice defeated; The Order of the Commissioner (Appeals) is bad in law and unjust and without giving due consideration to the documents on record; neither legal nor proper; The goods were not brought for sale but as gifts for relatives and friends; The goods are neither prohibited nor restricted; The Applicant was not aware of the customs rules and violations; The Applicant had brought the goods for the first time; In similar type of cases the goods were allowed to be re-exported;

5.2 The Revision Applicant cited decisions in favor of their case and prayed for setting aside the order of the Appellate authority and the order to re-export may be allowed.

6. A personal hearing in the case was held on 28.08.2019. Shri N. J. Heera, Advocate for the Applicant attended the hearing, he re-iterated the submissions filed in Revision Application and pleaded for re-export and cited the decisions of GOI/Tribunals. Shri A.C. Das Asst. Commissioner and Shri R. P. Gangwani Supdt, on behalf of the department contested that the request may be considered under section 77 of the Customs Act, 1962.

7. The Government has gone through the facts of the case. In the interest of justice, the delay of twenty seven days in filing the revision application, being within condonable limits is condoned and the Application is taken up on the merits of the case. A proper written declaration of the impugned goods was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and the Applicant preferred to use the facility of the green channel inspite of having dutiable goods, under the circumstances confiscation of the goods are justified.

8. However, the facts of the case state that the Applicant was wearing the wrist watch and the impugned gold was carried by the applicant in his pant pockets and it was not ingeniously concealed. Import of gold and watches is restricted not prohibited. The Applicant is an Non resident Indian and is based abroad for the last 15 years.


9. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the

Customs Act, 1962 have to be exercised and have permitted re-export, considering the circumstances of the case. In view of the above facts, the Government is of the opinion that though confiscation of the goods is justified a lenient view can be taken in the matter for re-export. The Applicant has pleaded for re-export and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified to that extent.

10. The Government allows redemption of the seized items for re-export on payment of redemption fine under section 125 of the Customs Act, 1962 and penalty under section 112(a) of the Customs Act, 1962 imposed, as per the order in original. Government however observes that once penalty has been imposed under section 112(a) there is no necessity of imposing penalty under section 114AA. The penalty of Rs. 10,000/- (Rupees Ten thousand) imposed under section 114AA of the Customs Act, 1962 is set aside.

11. Revision application is partly allowed on above terms.

12. So, ordered.


 (SEEMA ARORA)
 Principal Commissioner & ex-officio
 Additional Secretary to Government of India

ORDER No. 49/2019-CUS (WZ) /ASRA/

DATED 20.09.2019

To, _____

1. The Principal Commissioner of Customs (Airport),
Chatrapati Shivaji International Airport, Terminal -2, Mumbai.
2. Shri Shri Vicky Jhamatmal Sajnani
C/o Shri N. J. Heera, Advocate,
Nulwala Building, 41, Mint Road, Fort, Mumbai - 400 001.

Copy to:

1. The Commissioner of Customs (Appeals), Mumbai-III
2. Sr. P.S. to AS (RA), Mumbai.
- ~~3.~~ Guard File.
4. Spare Copy.