

REGISTERED
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. 371/01/B/15-RA/1083

Date of Issue 12.03.2021

ORDER NO. 55/2021-CUS (WZ)/ASRA/MUMBAI DATED 05.03.2021 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 Gulabani Junesh Harishbhai

Respondent : Pr. Commissioner of Customs, Mumbai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-000-APP-524-14-15 dated 05.11.2014 passed by the Commissioner of Customs (Appeals), Mumbai-III.

ORDER

This revision application has been filed by the Shri Gulabani Junesh Harishbhai. (herein referred to as Applicant) against the order MUM-CUSTM-000-APP-524-14-15 dated 05.11.2014 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Gulabani Junesh Harishbhai at the Mumbai CSI International Airport, on 28.04.2014 as he tried walking out through the green channel of the arrival hall. Examination of his person resulted in the recovery of five gold bars totally weighing 379 grams valued at Rs. 9,93,168/- (Rupees Nine lacs Ninety three thousand One hundred and Sixty eight).

3. After due process of the law vide Order-In-Original No. JC/RR/ADJN/105/2014-15 dated 30.07.2014 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, and imposed penalty of Rs. 1,00,000/- (Rupees One lac) under Section 112 (a) of the Customs Act,1962. A penalty of Rs. 5000/- (Rupees five thousand) was also imposed under section 114AA of the Customs Act,1962.

4. Aggrieved by this order the Applicant filed appeals with the Commissioner of Customs (Appeals), The Commissioner (Appeals) allowed redemption of the gold on payment of fine of Rs. 2,00,000/- (Rupees Two lacs) and held the penalties imposed as appropriate.

5. Aggrieved with the above order the Applicant has filed this revision application for the following reasons;

5.1 The Applicant respectfully submits it is a matter of record that the Commissioner (Appeals) has accepted all the submissions made by the Applicant before him in the appeal memo as well as those made at the time of personal hearing of the Appeal and the learned Commissioner (Appeals) had fairly conceded that the gold brought by the Applicant was indeed received by Applicant as gift from his aunt (masse) abroad for the

purpose of marriage of Applicant's sister and that the same was brought openly by the Applicant

5.2 Therefore, after finding the instant case to be different than the other cited cases. the imposition of harsh and exorbitant fine and penalty in the Applicant's case was not warranted. In the other cases, although the fact of non-declaration of the gold was similar to the Applicant's case but the other merits certainly differed, in as much as, in the other cases the gold was brought by passengers for commercial sale as also admittedly acquired by them through illegal means or the importer were frequent offenders and had attempted to sneak out deliberately to evade payment of duty etc., whereas in the instant case the mistake of non-declaration of gold was committed by the Applicant unintentionally for the first time as also it is accepted fact that the purpose of bringing gold by the Applicant was not for any commercial use.;

5.3 Hence the imposition of fine and penalty in the instant case ideally should not have been in the same ratio as imposed in the other cases having different facts. ;

5.4 In view of the above the Applicant makes a humble request to Joint Secretary to kindly reduce the redemption fine and penalty imposed in this case substantially and oblige.

6. In view of the above, personal hearings in the case were scheduled on 28.08.2019, 17.09.2019, 04.10.2019, 05.12.2019 and 12.12.2019. Due to the change in the Revisionary Authority more opportunities of personal hearing were extended on 08.12.2020, 15.12.2020, 22.12.2020 and 25.02.2021. Nobody attended the hearing on behalf of the Applicant or Respondent. The case is therefore being decided on merits based on the records of the case.

7. The Government has gone through the case records. It is observed that the Applicant did not declare the gold as required under section 77 of the Customs, Act, 1962 and had opted for the green channel. Therefore the confiscation of the gold is justified. Even though the Applicant has claimed that the gold was brought as a gift it should have been declared to the authorities. Once the gold is held liable for confiscation, the misdemeanor/ transgression of the passenger is held as confirmed and therefore the imposition of fine in lieu

of confiscation becomes mandatory and leads to imposition of personal penalty on the passenger.

8. The Applicant has prayed for reducing the redemption fine and penalty. The gold bars totally weigh 379 grams and have been valued at Rs. 9,93,168/- (Rupees Nine lacs Ninety three thousand One hundred and Sixty eight). The redemption fine is Rs. 2,00,000/- (Rupees Two lacs) ie approximately 20% of the value of the gold, the penalty imposed is Rs. 1,00,000/- (Rupees One lac) ie approximately 10% of the value of the gold. Government observes that the fine and penalty imposed is reasonable and appropriate. The order of the Appellate authority is therefore required to be upheld.

9. However in respect of penalty imposed under section 114AA of the Customs Act, 1962, Government observes the objective of introduction of Section 114AA in Customs Act as explained in para 63 of the report of the Standing Committee of Finance (2005-06) of the 14th Lok Sabha which states.....

" Section 114 provides for penalty for improper exports of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulations could escape penal action even when no goods were actually exported The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declaration, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to five times the value of the goods. A new Section 114AA is proposed to be inserted after Section 114A."

Penalty under Section 112 is imposable on a person who has made the goods liable for confiscation. But there could be situation where the export is only on paper, no goods ever cross the border. Since such situations were not covered for penalty under Section 112/114 of the Customs Act, 1962, Section 114AA was incorporated in the Customs Act by the Taxation Laws (Amendment) Act, 2006. Hence, once the penalty is imposed under Section 112(a), then there is no necessity for a separate penalty under section 114AA for the same act. The Government is in full agreement with the above

observations. Once penalty is imposed under section 112 (a), there is no need for penalty to be imposed under section 114AA of the Customs Act, 1962. Therefore, the penalty of Rs. 5,000/- (Rupees Five thousand) imposed under section 114AA of the Customs Act, 1962 is set aside.

10. Revision application is disposed of accordingly.

Shrawan
25/03/2021
(SHRAWAN KUMAR)

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

ORDER No. 55/2021-CUS (WZ) /ASRA/

DATED 5 03.2021

To,

1. Shri Gulabani Jayesh Harishbhai, C/o Shri B. J. Raichandani, Advocate, 59, Swastic Plaza, V. M. Road, J.V.P.D. Scheme, Vile Parle (W), Mumbai -400 009.
2. The Pr. Commissioner of Customs, CSI Airport, Mumbai.

Copy to:

3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.