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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No. 371/127/B/WZ/2020-RA /6520 : Date of Issue 05.09.2023

ORDER NO. 619 /2023-CUS (WZ) /ASRA/MUMBAI DATED 30.08.2023
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.

F.No. 371/127/B/WZ/2020-RA

Applicant : Shri. Janardan Gunaji Kondvilkar

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-780/2019-20 dated 23.12.2019
issued on 27.12.2019 through F.No. S/49-235/2019
passed by the Commissioner of Customs (Appeals),
Mumbai – III.

ORDER

This revision application has been filed by Shri. Janardan Gunaji Kondvilkar (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-780/2019-20 dated 23.12.2019 issued on 27.12.2019 through F.No. S/49-235/2019 passed by the Commissioner of Customs (Appeals), Mumbai – III.

2(a). Brief facts of the case are that on 10.06.2017, two international passengers viz, Shri. Vijay Jagdish Rawal and Shri. Mufatlal Rawal (hereinafter referred to PAX-1 and PAX-2, resp.) were intercepted by Customs Officers near the exit gate of CSMI Airport, Mumbai. They had arrived from Bangkok onboard Air India Flight No. AI-331. On sustained interrogation, both the said passengers revealed that they had concealed gold under the seat nos. 33J and 34J occupied by them during the flight. Accordingly, gold which had been kept in two pouches in the cylindrical hollow pipes of the said seats was retrieved by the officers. 5 cut pieces of FM gold bars, collectively weighing 1000 gms were recovered from PAX-1 and 4 cut pieces of FM gold bars, collectively weighing 823 grams were recovered from PAX-2. The same were assayed through a Government Approved Valuer, who certified the gold to be of 24 Karats i.e. 999% purity. Thus, a total of 9 cut pieces of FM gold, totally weighing 1823 grams and valued at Rs. 48,84,455/- were recovered from the said two passengers (Rs. 26,79,350 being the value of 1000 gms of 5 cut pieces of FM gold bars and Rs. 22,05,105/- value of 5 cut pieces of 823 grams of FM gold bars)

2(b). Pax-1 and Pax-2 during their interrogation had revealed the role of one Shri. Sanjay Rawal; that the pouches containing the FM gold bars had been given to them by him (Sanjay Rawal); that instructions were issued to them

by Sanjay Rawal; that monetary consideration was given to them by Sanjay Rawal.

2(c). Pax-1 in his statement dated 20.11.2017 recorded under Section 108 of the Customs Act, 1962 revealed that the applicant, alias Babu who was an Air India Officer was to retrieve the gold kept in the cylindrical hollow pipe beneath seat no. AI331/09.06.2017; that he did not know the address of the applicant; that applicant's no was provided by PAX-1;

2(d). Statement of the applicant was recorded on 22.11.2017 under Section 108 of the Customs Act, 1962 and he revealed that he was working for Air India as a Sr. Supdt. Service Engineer; that he was on the night duty on said date of seizure i.e. 09.06.2017 starting from 09.30 p.m to 06.30 a.m of 10.06.2017; that in the evening of 10.06.2017, Shri. Sanjay Rawal had contacted him for retrieving gold but he had refused to do so because he was not feeling well that day; that he knew Shri. Sanjay Rawal for the last 2 years and PAX-1 for last six months; when asked specifically about his role in a case of seizure of 1600 grams of gold on 14.11.2017, the applicant stated that he had retrieved the gold and was apprehended by the Customs Officers; that earlier on 19 times he had retrieved gold from the aircraft and had handed it over to Sanjay Rawal and 2 times to Pax-1.

3. After due process of investigations and the law, the Original Adjudicating Authority (OAA) i.e. the Addl. Commissioner of Customs, CSI Airport, Mumbai, vide Order-In-Original No. ADC/AK/ADJN/366/2018-19 dated 26.11.2018 [F.No. S/14-5-137/2017-18/Adjn [SD/INT/AIU/147/2017 AP 'D'] ordered for the absolute confiscation of the nine (09) cut pieces of FM gold bars, totally weighing 1823 grams, valued at Rs. 48,84,455/- under Section 111 (d), (1) and (m) of the Customs Act, 1962. Further, a penalty of Rs. 3,20,000/-, Rs. 2,65,000/- and Rs. 2,00,000/- were imposed on PAX-1,

PAX-2 and the applicant, resp., under Section 112 (a) and (b) of the Customs Act, 1962.

4. Aggrieved by this Order, the applicant alongwith PAX-1 & PAX-2 preferred appeals before the appellate authority i.e. Commissioner of Customs (Appeal), Mumbai - III, who vide Order-in-Appeal No. MUM-CUSTOMS-PAX-APP-780/2019-20 dated 23.12.2019 issued on 27.12.2019 through F.No. S/49-235/2019 did not find it necessary to interfere with the impugned OIO.

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

- 5.01. that the OIA passed by the OAA was improper and incorrect;
- 5.02. that OIA suffers from arbitrariness and non-application of mind; that no thought to the facts of the case has been given; that OIA is a cryptic order passed without considering the law in proper perspective;
- 5.03. that the role of the applicant had not been investigated by the Customs; that applicant had accepted that he knew Shri. Sanjay Rawal, but had refused to retrieve the gold; that no evidence had been brought on record by the investigating agency to establish nexus of the applicant with others; that they rely on the case of Commr. of Customs vs. Shakti Ahmed Khan passed by Hon'ble Allahabad High Court and in the case of Ashok Kumar Singh vs. UOI, also passed by Hon'ble Allahabad High Court;
- 5.04. that it could not be ascertained that Shri. Sanjay Rawal had contacted the applicant; that the burden of proof was on the investigating agency to prove the role of the applicant; that investigation had failed to bring any proof on the record; this aspect had not been considered by the lower authorities while deciding the case; that applicant had been made a victim of the case even though he was not present at the spot; that admission on the part of the applicant had not been corroborated by any documentary proof; that they rely in the case law of Mohd. Fasin vs. State of Tamil Nadu in Criminal Appeal no. 298 of 2014 of the Apex Court;
- 5.05. that no contraband was recovered from the applicant had not been appreciated by the AA; that the statement given by the applicant was exculpatory; that he had not handled the gold;
- 5.06. that to reiterate that no case had been made out against the applicant, they have relied upon the undermentioned case laws;

- (a). Apex Court in the case of Pratibha Processors vs. UOI, 1996-88-ELT-12-SC;
- (b). Apex Court in the case of Hindustan Steel Ltd vs. State of Orissa, 1978-2-ELT(J159)-SC;
- (c). Merck Spares vs. Coll. Of C.Ex & Cus., New Delhi, 1983-13-ELT-1261-CEGAT;
- (d). Shama Engine Valves Ltd, Bombay vs. Coll. Of Customs, Bombay, 1984-18-ELT-533;
- (e). Madhusudan Gordhandas & Co. vs. Coll. Of Customs, Bombay, 1987-29-ELT-904-Tri.;
- (f). Anant Samant vs. Commr. of Customs, Mumbai, 2000-117-ELT-TRI-Mumbai;
- (g). Bombay High Court in the case of UOI vs. Aijaj Ahmed, 2009-244-ELT-49-BOM
- (h). In the case of Murugesan vs. Commr. of Customs, 2010-254-ELT-A15(SC);

Under the aforesaid circumstances of the case, the applicant has prayed to the revisionary authority to set aside the OIA passed by the AA with consequential relief or to pass any other order as deemed fit.

6. Applicant has filed an application for condonation of delay. They have attributed the delay was due to Covid-19 pandemic and the lockdown that had been imposed.

7. Personal hearing in the case was scheduled for 11.05.2023, 18.05.2023, 07.07.2023 and 14.07.2023. None turned up on behalf of the Applicant / Respondent for the personal hearing. Sufficient opportunities have been given to the applicant / respondent. Therefore, the case is being taken up for a decision, ex-parte, on the basis of evidence available on the records.

8. On the issue of condonation of delay, Government notes that the OIA dated 23.12.2019 was issued on 27.12.2019. In the FORM CA-8, the column pertaining to "date of communication of the order appealed against" has been

left 'blank' by the applicant. In any case, Government notes that during the appealable period, due to the Covid pandemic, the Apex Court had granted a moratorium for filing appeals etc. This moratorium was from 15.03.2020 to 28.02.2022 [Misc. Appln. No. 21/2022]. The applicant has filed the Revision Application on 29.06.2020. Considering the said moratorium period granted by the Apex Court, it is seen that the applicant had filed the revision application within time.

9. At the outset, Government notices that only the applicant has filed a revision application. The other two appellants in the impugned OIA are PAX-1 and PAX-2, and they have not filed for revision of the OIA. This means that the order of absolute confiscation of the 9 cut pieces of gold bars recovered from PAX-1 and PAX-2 has gained finality. Consequently, it is evident that the revision application filed by the applicant against the impugned OIA dated 23.12.2019, is only on the limited issue of the penalty imposed on him. Accordingly, the case is being taken up.

10. The Government has gone through the facts of the case. Government observes that during the investigations, the role of the applicant had unfolded. A large quantity of gold had been recovered in the case and the method adopted was ingenious. The gold bars had been cleverly kept concealed in cylindrical hollow pipes underneath the seats no. 33J and 34K of the aircraft which had arrived from Dubai. It was clear that this smuggling operation was possible only when a person having access to the aircraft was involved in the smuggling activity. The applicant was working as Sr. Supdt. Service Engineer for Air India and had access to the aircraft. Moreover, on the said day of the seizure of the gold bars, he was on duty. Admittedly, he knew PAX-1 and Sanjay Rawal who were involved in the smuggling operation. Applicant had admitted that he had received a call from Sanjay Rawal on the

said day of the seizure. The contact no. of the applicant had been revealed by PAX-1. On his own admission, the applicant had stated that earlier on 19 occasions he had retrieved gold from the aircraft. Infact, during the investigation of this case, the applicant had been arrested by Customs in a seizure involving approx. 1600 grams of gold from an aircraft. It is very clear that the applicant was an important 'cog' in the smuggling operation.

11. Government notes that the OAA while imposing a penalty on the applicant had deliberated on the role played by him in the smuggling operation. Further, the Government notes that the AA too had considered the role played by the applicant and having found no valid reasons 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 issue of penalty imposed on the applicant is legal and proper and does not find it necessary to interfere in the same.

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

Shrawan
30/8/23
(SHRAWAN KUMAR)

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

ORDER No. 619 /2023-CUS (WZ) /ASRA/

DATED 30.08.2023

To,

1. Shri. Janardan Gunaji Kondvilkar, Building No. 7, Room No. 3, Old Air India Colony, Kalina, Mumbai – 400 029.
2. Pr. Commissioner of Customs, Chhatrapati Shivaji Maharaj International Airport, Level-II, Terminal – 2, Sahar, Andheri West, Mumbai : 400 099.

Copy to:

1. Sr. P.S. to AS (RA), Mumbai.

2. File Copy.
3. Notice Board.