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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. **371/140/B/2019-RA** / 515

Date of Issue 27.01.2023

ORDER NO. 64/2023-CUS (WZ)/ASRA/MUMBAI DATED 25.01.2023
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.

Applicant : Shri Juned Gulam Habib Bagdadi

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-718-2018-19 dated 14.11.2018 (DOI-
19.11.2018) [File No.S/49-756/2017/AP] passed by the
Commissioner of Customs (Appeals), Mumbai-III.

ORDER

This revision application has been filed by Shri Juned Gulam Habib Bagdadi (herein after referred to as the Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-718-2018-19 dated 14.11.2018 [DOI: 19.11.2018] [File No. S/49-756/2017/AP] passed by the Commissioner of Central Excise (Appeals-I), Mumbai-III.

2. Brief facts of the case are that on 04.09.2017, the Officers of AIU Customs, at CSI Airport Mumbai intercepted one passenger Shri Juned Gulam Habib Bagdadi, the applicant, holding Indian passport, after he had cleared himself through Green channel of Customs near the exit gate at CSI Airport, Mumbai. He had arrived in Mumbai by Flight No. EK-504 from Saudi Arabia. During personal search the Officers recovered one gold bar weighing 100 grams valued at Rs.2,72,327/- which was not declared by them under Section 77 of the Customs Act,1962. The same was seized by the officers in the reasonable belief that the same was smuggled into India in a clandestine manner in contravention of the provisions of the Customs act, 1962.

3. The Original Adjudicating Authority (OAA) viz the Assistant Commissioner of Customs, C.S.I. Airport, Mumbai, vide his OIO no. Aircus/T2/49/1527/17-18 'B' dated 04-09-2017 ordered confiscation of the recovered one gold bar weighing 100 grams valued at Rs.2,72,327/- under Section 111 (d) of Customs Act, 1962 with an option to redeem goods on payment of a fine of Rs.1,00,000/- under section 125 (1) of the Customs Act, 1962 and on payment of applicable duty thereon. A personal penalty of Rs 10,000/- under section 112(a) & (b) of the Customs Act, 1962 was also imposed on the applicant.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. MUM-CUSTOM-PAX-

APP-718-2018-19 dated 14.11.2018 rejected the appeal of the Applicant and upheld the Order passed by the OAA.

5. Aggrieved with the above AA's Order, the Applicant filed this revision application on the following grounds:

- 5.1 That the applicant states that his stay abroad was more than six months and hence he was eligible to bring the gold under notification no. 50/2017-Cus dated 30.06.2017 (S.No. 356).
- 5.2 That the applicant's stay abroad was from 20th September 2016 to 4th September 2017 which is 11 and half months (except the collective brief stay of 18 days during his two short visits). Thus, he is an eligible passenger for import of gold on his arrival, at a concessional rate, under Notification. No. 50/2017- Cus dated 30.06.2017 (S.No. 356), as his collective brief stay of 18 days during his two short visits, is required to be ignored, as per the condition No. 41 and had not availed any concession under the aforesaid notification during his two arrivals in India on 4th April 2017 and 23rd June 2017. In view of the above, the concessional rate of Basic Customs Duty @10%+ 2% Edu. Cess and 1% SHSE cess, should have been charged and recovered from him under the provisions of Notification No. 50/2017-Cus dated 30.06.2017 (S.No. 356 and condition No. 41), on the 100 gm gold, valued at Rs.2,72,327/-.
- 5.3 That as per calculation @ 10% BCD, the Customs duty required to be paid would be Rs. 27,233/- (BCD @10%), Rs. 547/-(Education cess 2%) and Rs.272/- (Secondary and Higher Secondary cess @1%), Totally amounting to Rs. 28,052/-, instead of Rs. 98,173/-. Thus an amount of Rs. 70,121/-, has been recovered in excess without any authority of law and hence liable to be refunded.
- 5.4 That the imposition of fine of Rs. 1,00,000/-, is shockingly disproportionate to the quantum of non-payment of duty and hence liable to be set aside or reduced. Moreover, the penalty imposed of

Rs. 10,000/-, is also liable to be set aside or reduced, as no specific sub clause is mentioned in the OIO.

- 5.5 that he had submitted the copy of the passport before the adjudicating authority as evidence at the time of his arrival and the same passport was only produced before the Commissioner (Appeals). Hence, the findings of the Commissioner (Appeals) that other evidence is produced before him are factually incorrect. Therefore, the action of the applicant in relying upon the evidence, which was already produced before the Adjudicating authority, does not amount to producing of any other evidence, before the Commissioner (Appeals).
- 5.6 That the decision in the case of Commissioner of Customs (Prev), Mumbai vs M. Ambalal and Co referred by the Commissioner (Appeals) relied by the AA is based on different facts and hence distinguishable from the facts of the applicants case. The applicant relied on the decision of the Hon. CESTAT's decision in the case of Prakash Chandra Shantilal vs. Commissioner of Customs, Ahmedabad {2013 (290) ELT 125 (Tri-Ahmedabad)}
- 5.7 that the gold brought in was detained within the Customs Area and was not seized. Therefore, it cannot be called as smuggled goods and the applicant is eligible for charging of Customs duty at the concessional rate of Customs duty @ 10% Adv.+ 2% Edu. Cess % HSEC, under notification No. 50/2017-Cus dated 30.06.2017.
- 5.8 Hence the applicant requested to charge the Customs duty at a concessional rate of (10% BCD+2% E.cess+ 1% SHE cess), as per the Notification No. 50/2017-Cus dated 30.06.2017 (S.No.356) and in turn order refund of the excess duty collected from him and to set aside or reduce the fine and penalty of Rs. 1,00,000/- and Rs.10,000/-, imposed as the same are disproportionate to the quantum of duty payable

6. Personal hearings in the case were scheduled 13.09.2022, 27.09.2022, 11.10.22 and 18.10.2022. Shri Khaled Sayed, Advocate appeared online for the hearing and submitted that the applicant is working in UAE, has brought Gold for personal use, therefore gold should be released on nominal fine and penalty. He further submitted that the applicant is eligible for concessional rate of duty

7. At the outset Government notes that the applicant has filed this Revision application on two grounds viz a) claiming the benefit of Notification 50/2017-Cus dated 30.06.2017 against the impugned gold brought by him, as the appellant's stay abroad was from 20th September 2016 to 4 September 2017 which is 11 and half months, thus, he is an eligible passenger for import of gold on his arrival; and b) to reduce the redemption fine and penalty imposed on the appellant.

8. The pointwise observation of the Government in respect of the aforesaid two grounds are as under:

a) Claiming the benefit of Notification 50/2017-Cus dated 30.06.2017

Government notes that on this aspect, the AA has held that this claim was not put forth by the appellant during the adjudication proceedings. Hence, the request made by the appellant is liable for rejection as per Rule 5 of the Customs (Appeals) Rules, 1982 which clearly states that the appellant shall not be entitled to produce before the Commissioner (Appeals) any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the adjudicating authority.

Government does not agree to AA's said findings. The OAA's order was issued on the same day when the applicant had arrived in India and was intercepted and at the time of interception the Passport should have been produced by the applicant before the department. Even if they had not claimed the benefit of the Notification No. 50/2017-Cus, the duration of the stay could have been obtained by the OAA from the Passport. Hence the evidence of the

duration of stay produced is not new evidence. Government therefore directs the Respondent to verify the dates of the applicant's stay abroad and if it is 11 and a half months as claimed by the applicant, the applicant would be an eligible passenger for import of gold on his arrival, at a concessional rate, under Notification No. 50/2017- Cus dated 30.06.2017 (S.No. 356) and would be able to avail the said benefit with consequential relief.

b) to reduce the redemption fine and penalty imposed on the appellant.

Government notes that the Applicant had brought a gold bar weighing 100 grams. He did not declare the gold as required under section 77 of the Customs Act, 1962. Since declaration was not made, therefore confiscation of the gold is justified. The quantity of the gold brought by the applicant is small, the ownership of the gold is not disputed and there is no allegation that the gold was ingenuously concealed. Hence, the redemption fine of Rs1,00,000/- imposed by the OAA and upheld by the AA, on the gold valued at Rs2,72,327/- is harsh and not justified. Considering the above facts, Government is inclined to modify the redemption fine imposed by the OAA and upheld by the AA.

9. The Applicant has also pleaded for reduction of the penalty imposed on him. The value of the gold in this case is Rs. 2,72,327/-. Government finds that the penalty of Rs. 10,000/- imposed on the Applicant under Section 112(a) & (b) of the Customs Act, 1962 is appropriate and commensurate to the omissions and commissions of the Applicant.

10.1 In view of the above, the Government modifies the impugned order passed by the Appellate authority and reduces the redemption fine imposed on the applicant from Rs.1,00,000/- to redemption fine of Rs. 50,000/- (Rupees Fifty Thousand only only).

10.2 The penalty of Rs. 10,000/- imposed by the OAA, under Section 112(a) and (b) of the Customs Act, 1962, being appropriate and commensurate

with the omissions and commissions of the Applicant and upheld by the AA, is sustained.

17. The Revision Application is disposed of on the above terms.


15/11/23
(SHRAWAN KUMAR)

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

ORDER NO. 6A/2023-CUS (WZ)/ASRA/MUMBAI DATED 25.01.2023.

To,

1. Shri Juned Gulam Habib Baghdadi, 93/111, Sunrise CHS New MHADA Colony, Mankhurd West, Mumbai-400043
2. The Pr. Commissioner of Customs, C.S.I Airport, Terminal 2, Level-II, Sahar, Andheri (East), Mumbai 400 099.
3. The Commissioner of Customs (Appeals), Mumbai-III, 5th Floor, Avas Corporate Point, Makwana Lane, Behind S.M.Centre, Andheri Kurla Road, Andheri (East), Mumbai 400 059.

Copy to:

1. Advocate K.A. Sayed, B-18, Sunshine Terraces, Old Sangvi, New Sewa Hospital, Pune-411027
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.