

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. 373/30/B/16-RA/1635

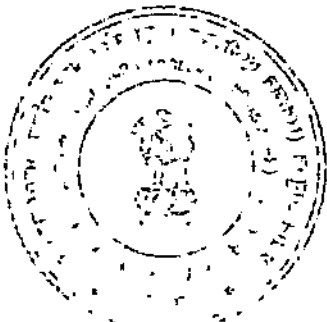
Date of Issue 08/10/18

ORDER NO.677/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 28.09.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Mr.Uttam Chand Jain

Respondent: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-CUSTOM-PAX-APP/666-667/15-16 dated 29.02.2016 passed by the Commissioner of Customs (Appeals) MUMBAI.



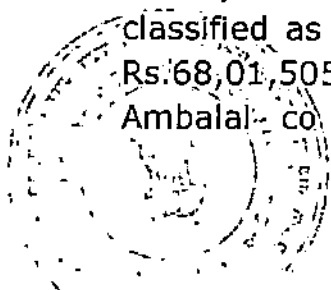
ORDER

The revision application is filed by Mr. Uttam Chand Jain against the Order in Appeal No. MUM-CUSTOM-PAX-APP/666-667 15-16 dated 29.02.2016 passed by Commissioner of Customs (Appeals), Mumbai in respect of Order in Original No. ADC/ML/ADJN/09/2013-14 Dated 30.04.2014 passed by the Additional Commissioner of Customs, CSI Airport, Mumbai.

2. Acting on intelligence, search was conducted by DRI, Mumbai at the shop of the Applicant Shri Uttam Chand Jain, which resulted in recovery of 1425 kgs of "888" brand Glass Chatans of foreign origin. When confronted about the origin of the goods, the applicant confessed that the goods were imported in nature and were of Chinese origin, but could not produce any documents in relation to the imported goods. Therefore the goods were seized by the officers in the reasonable belief that the said goods are liable for confiscation under the provision of the customs act, 1962. On the basis of further investigations and statements of Shri Uttamchand Jain recorded under Section 108 of the Customs Act, 1962, a Show cause Notice proposing the confiscation of the seized goods and penalties on the applicant and one Shri Asif Bhaiwas was issued. The adjudicating authority determined the value of the goods at Rs.74,22,752/- and confiscated the same under section 111(d),(l)(m) of the Customs Act, 1962. However, an option was given to the applicant to redeem the same on payment of R.F of Rs.30,00,000 and also penalty of Rs.15,00,000/- was imposed on the applicant. Further, the adjudicating authority classified the goods under Heading 9803000 of the schedule to the customs Tariff Act, 1975 @100 % rate of duty, while denying the notification benefit deeming the imported goods as smuggled goods and the duty so arrived was Rs.76,45,435/-.

3. Being aggrieved by the aforesaid order, applicant has preferred an appeal before the Commissioner (Appeal) and the said authority upheld the order of the original authority. Thus the present Revision Application has been filed questioning the Order of the Commissioner (Appeal).

4. The gist of the submissions of the applicant is that being a seizure outside the customs area the goods are not liable for confiscation and therefore no fine and penalty was imposable; the applicant was not exactly aware of the sources of goods and hence goods shall not be classified as Baggage; the value of the goods shall be re-determined at Rs.68,01,505; reliance be placed on the CESTAT order in case of Ambalal-co VS. Commissioner of Customs (Preventive) Mumbai -



2012(281)ELT 432 (Tri-Mum) and accordingly goods be classified under CTH 70181020 with the applicable rate of duty, and prayed that lenient view may be taken considering the age and depreciation of the goods.

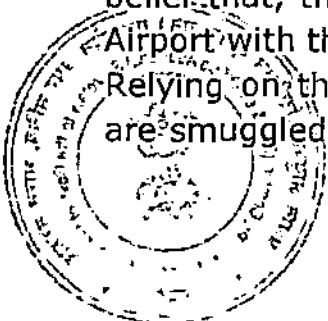
5. Personal Hearing was held on 25.07.2018, Shri. Rajkumar P Kulkarni, Superintendent of customs appeared on behalf of the Department and while reiterating the finding of Commissioner (Appeal) Order along with written submissions, he pleaded for upholding the order of the lower Appellate Authority and none appeared on behalf of the applicant. The Applicant Shri. Uttamchand Jain along with consultant Shri. A.S. Sahota appeared on 25.09.2018 reiterating the submissions made in Revision Application, written submissions and case laws, pleaded for allowing the Revision Application.

6. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal and the rival submissions and related Case Laws.

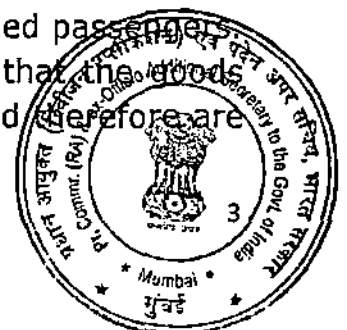
7. The government finds that the seizure affected in the instant case is outside the Customs Area and goods seized are of foreign origin and the possessor/Applicant could neither produce any documentary evidence towards the source of the goods nor offer any satisfactory explanation in relation to the imported goods and therefore, the seizure and subsequent confiscation is valid and further, the adjudicating authority elaborately explains method of valuation adopted for the goods and its reliance on the actual price said to have been paid by the applicant and as well as the contemporaneous import data prevailing at the material time. Therefore, the government do not find any merit in further broaching these issues.

8. The government observes that the main issue for consideration and decision is whether the confiscated goods can be treated as Baggage and do they merit any classification other than customs tariff heading 9803.

9. The evidence cited by the departments towards its proposition of treating the confiscated goods as baggage is the statement of the Applicant himself that one Shri. Asif Bhai had supplied the goods and in his belief that, the said goods were smuggled through Mumbai International Airport with the assistance of several unknown and un named passengers. Relying on these statements, Department has concluded that the goods are smuggled through the Mumbai International Airport and therefore are



2

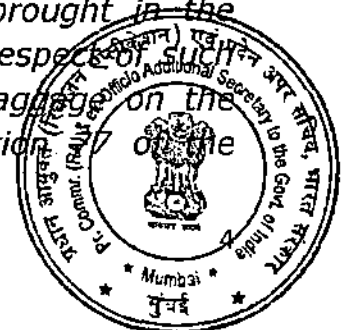
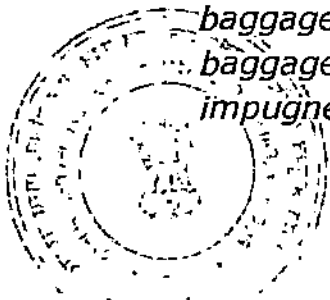


nothing but non bonafide Baggage meriting classification under Customs Tariff Heading 98030000 and determined the rate of duty as 100 %, on the ground that the smuggled goods are ineligible for benefit of Notification. The Government is of the firm opinion that the department's proposition is neither supported by any legal evidence in the form documents nor supportive evidence in the form of statements from the alleged supplier of the goods .The documents so referred and relied upon by the department are irrelevant and does not serve as proof towards its proposition.

10. An argument has been put forth by the applicant that being the smuggled goods the same does not merit classification as Baggage in view of the judgment of the Supreme Court in the case of M.Ambalal and Co and decision of the Honourable Tribunal in the said case subsequent to the apex court judgement.

11. The Government observes that the Hon'ble Tribunal in case of *M.Ambalal and Co* has dealt with a similar matter. In the said case, the Revenue wanted to charge the duty on goods considering them as baggage. The Tribunal has denied it on the ground that the seizure had not taken place in the customs area but outside the Customs area and Revenue has no evidence to show that the goods have been brought as baggage. The observations of the Tribunal in a portion of paragraph 5.5 is relevant and reproduced below,

"5.5Secondly, there is no evidence that the goods have been imported by passengers in their baggage except for a statement given by the appellant which is not conclusive to say that the goods have been actually imported as passenger's baggage. Further as per the said statement - "diamonds used to be imported/smuggled personally or through carriers by air and by other means". Since the appellants failed to declare those 'other means', the adjudicating authority took the view that all the diamonds under seizure were imported personally in baggage or through carriers and therefore the goods could be charged to duty at the baggage rate. This is only a hearsay evidence and in our view cannot be taken as a basis for classification of goods as baggage. Further the seizure has not taken place in a customs area at all so as to have a reasonable presumption that it could have been brought in the baggage. Besides, there is no declaration filed in respect of the baggage to apply the rate of duty applicable to baggage on the impugned goods under Section 78 read with Section



Customs Act. In view of this, the claim of the department to levy duty under Chapter Heading No.98.03 does not have sufficient legal basis and we hold accordingly. The question would then arise what would be the relevant classification for the purpose of levy in the instant case. "Diamonds, whether or not worked, but not mounted or set" fall under Heading No.71.02 of the Customs Tariff. Since the goods under seizure are rough as well as cut and polished diamonds, they would be correctly classifiable under Heading No.71.02 of the Customs Tariff for the purpose of levy and we hold accordingly."

12. The government finds that ratio of the above Judgment applies squarely to the facts of the present case as the facts involved are more or less identical.

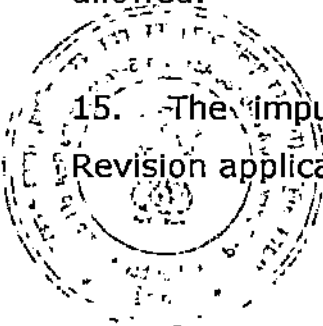
13. In view of the above discussion and findings, the Government orders

- i) Reduction of redemption fine on impugned goods from Rs.30,00,000 (Rupees Thirty Lakhs only) to Rs.10,00,000/- (Rupees Ten Lakhs only)
- ii) Reduction of personal penalty on Shri.Uttamchand Jain from Rs.15,00,000 (Rupees Fifteen Lakhs only) to Rs.5,00,000/- (Rupees Five Lakhs only)
- iii Classification of impugned goods ie Glass Chatons under Tariff Heading 7018 and applicable rate of duty thereunder shall be payable at the rate prevalent at the time of redemption in case the applicant opts to redeem the goods on payment of redemption fine.

C. R. MISHRA
(A.R.) Additional Commissioner

14. The Order-in-Appeal No.MUM-CUSTOM-PAX-APP/666-667 15-16 dated 29.02.2016 passed by Commissioner of Customs (Appeals), Mumbai is modified to the above extent and Revision Application is allowed.

15. The impugned Order in Appeal is modified as detailed above. Revision application is partly allowed on above terms.



16. So ordered.

(Handwritten Signature)
28.9.18

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 677/2018-CUS (SZ) /ASRA/MUMBAI
09.2018

DATED 28/9/18

To,

Shri Uttam Chand Jain
Shop No. 8, 38, Shrinathji Bldg,
Ground Floor, JMC Compound,
3rd Bhoiwada,
Mumbai-400 002

Copy to:

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

ATTESTED

(Handwritten Signature)
28/9/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

