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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. 371/14/B/15-RA/2189

Date of Issue 22.03.2021

ORDER NO. 78/2021-CUS (WZ)/ASRA/MUMBAI DATED 16.03.2021 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 : Smt. Nwaka Beatrice Nene

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-CUSTM-000-APP-522-523-14-15 dated 31.10.2014 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

ORDER

This revision application has been filed by the Smt. Nwaka Beatrice Nene (herein referred to as Applicant) against the order MUM-CUSTOM-000-APP-522-523-14-15 dated 31.10.2014 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Smt. Nwaka Beatrice Nene, a Nigerian passport holder at the C.S. International Airport, on 16.05.2013 as she tried walking out through the exit gate after clearing herself through the green channel. Examination of her hand bag resulted in the recovery of assorted gold jewellery totally weighing 1497.45 grams valued at Rs. 40,52,300/- (Rupees Forty lakhs Fifty two thousand Three hundred). Further examination of her baggage resulted in the recovery of 46 yards of assorted embroidery polyester knitted fabrics totally valued at Rs. 1,53,031/- (Rupees One lakh Fifty three thousand and Thirty one).

3. After due process of the law vide Order-In-Original No. 25/2015 dated 26.01.2015 the Original Adjudicating Authority ordered confiscation of the gold and other goods under Section 111 (d) (l) and (m) of the Customs Act, 1962 but allowed redemption of the same on payment of Rs. 8,00,000/- (Rupees Eight lakhs) and imposed penalty of Rs. 4,00,000/- (Rupees Four lakhs thousand) under Section 112 (a) and (b) of the Customs Act, 1962. A penalty of Rs. 10,000/- 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) vide its order MUM-CUSTOM-000-APP-522-523-14-15 dated 31.10.2014 allowed re-export of the gold and fabrics and rejected rest of the Appeal.

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

5.1 The Applicant submits that the Respondent was pleased to dismiss the Appeal filed by the Applicant and allow re-export of the goods but

allowed the high redemption fine and penalty imposed by the Ld. Respondent.

5.2 a) The Applicant submits that the findings and order passed by the Ld Respondent are contrary to the law and evidence on record

b) The Applicant submits that the findings and order passed by the Ld Respondent are bad in law, illegal, unjust and unfair

c) The Applicant submits that in view of the Ld Respondent observing in para 8 of the impugned order dated 31.10.2014 as "In the instant case on going through the facts of the case, it is observed that the jewellery and fabrics were brought by the passenger from Dubai and she intended to take the said goods to Nigeria, passenger is found to be the owner and not a carrier, goods were found in hand bag and were not ingeniously concealed. The adjudicating authority has specifically recorded in para 52 of his order that goods are not meant for consumption in India. The re-export of goods is therefore, allowed. In spite of the said observation made by the Ld. Respondent. the Ld. Respondent has imposed such heavy fine and penalty on the Applicant.

d) The Applicant submits that the entire order passed by the Ld Respondent clearly reflects non application of mind on the part of the Ld. Respondent.

e) The Applicant submits that the impugned order reflects a total bias against the Applicant on the part of the Ld. Respondent.

5.3 The Applicant humbly prays that the impugned order in Appeal be modified to the extent that the fine and penalty imposed on the Applicant be set aside and allow re-export of gold jewelry without fine and penalty considering the facts and circumstances of the case.

6. In view of the above, personal hearing in the case was held on 09.03.2021. Shri N. J. Heera attended the said hearing on behalf of the Applicant and reiterated the submissions made earlier. He submitted that the passenger was a Nigerian business lady travelling to India. She carried gold jewellery for sale in Nigeria and it was paid through her credit card. This jewellery was not to be disposed in India. Therefore he submitted that penalty and redemption fine is very excessive as it's a genuine case. Nobody attended the hearing on behalf of the Respondent.

7. The Government has gone through the case records. It is observed that the Applicant did not declare the gold jewelry as required under section 77 of the Customs, Act, 1962 and was intercepted at the exit, after she had cleared herself through the green channel. Therefore the confiscation of the gold jewelry is justified. Once the gold jewelry is held liable for confiscation, the misdemeanor/transgression of the passenger is held as confirmed and therefore imposition of personal penalty on the passenger becomes necessary.

8. Government however notes that the Applicant is a Nigerian citizen. She is the undisputed owner of the gold as evidenced by the two receipts for purchase of the assorted gold jewelry recovered from her hand baggage and four bills for the purchase of fabrics/ dress materials were also recovered from her hand baggage. The payment for these goods has been made vide her credit card. There is no allegation that the gold jewelry was ingeniously concealed. There are no allegations that the Applicant is a habitual offender and was involved in similar offences earlier. The issue at hand in the case is whether the Applicant had brought the impugned goods for sale in India by avoiding payment of Customs duty.

9. The Original adjudicating authority has in its order dated 31.12.2013, para 5 has reproduced the details of interrogation conducted by the custom officers as detailed below.

" On being asked whether she traveled to Mumbai earlier, she stated that she came to Mumbai in the month of March, 2013.

On being asked as to why she brought the assorted jewellery and fabric under seizure in to India, she stated that she had put her baggage through X-ray machine and cleared; that this time she was going back to Nigeria via Mumbai and that she purchased the said goods at Dubai for taking to Nigeria.

When she was questioned that it appears that she wanted to sell the said recovered jewellery and fabrics in Mumbai to make profit and she might have brought gold jewellery and other valuable items last time also and might have sold them in Mumbai for profit and it might be of her adopted practice and if caught she could escape by saying that the same were brought for taking to her country, to which Ms Nwaka B Nene stated that it was not true; that last time she came from Nigeria and not from Dubai and she did not bring any jewellery and valuables at that time; that the designs of the seized jewellery were of African

type which would be liked by Nigerians only and that the fabrics were also liked by Nigerians only and that she had no intention of selling the jewellery and fabrics in Mumbai but the same was meant to be taken to Nigeria and sell there.

On being asked whether she knew that it is an offence to import dutiable goods without declaring to the Customs, she stated that she does not know the Customs Rules in India and hence she did not declare the goods to Customs.

On being asked as to why she opted for Green Channel she stated that she selected Green Channel because she did not carry anything which was to be left in India and that she did not know that she had to declare even the goods which were meant to be taken to her country. On being asked she has a registered family business in the name of M/s. BEMACH CONTRACTORS LTD under Registration No. AHQ DOAL 5354; that she has come to India on tourist visa and not on business visa as she was only exploring the market in India."

In para 20 the order of the Original adjudicating authority states "Though it appears that the passenger brought the gold jewellery and dutiable goods under seizure into India because of lack of knowledge with regard to Indian customs rules and regulations, however the ignorance of rules regulations/ law cannot be taken as an excuse. More ever it was not her first visit to India. As such the passenger by carrying, importing, possession and non declaration of the goods under seizure, has rendered the said goods liable to confiscation and the Passenger for her acts of commission and omissions rendered herself liable to penalty under the Provisions of Customs Act, 1962."

10. The above quoted paras indicates that this is not a case of outright smuggling operation. The gold is in jewellery form, and not in bullion form. The Applicant has contented that the designs of the impugned gold jewellery and the fabrics are those favoured in Africa and are not the type favoured in India. The same has not been negated by the orders of the lower authorities, thereby adding force to her submissions that the gold was not for sale in India. The Original adjudicating authority states that *"the ignorance of rules regulations/ law cannot be taken as an excuse."*, however a foreigner cannot be held guilty for not knowing Indian law. Non declaration of the goods in this case cannot be held in the same manner as that of an Indian citizen when there are clear evidences that the intent of the foreign tourist does not point to a blatant attempt to

smuggle the gold into India. Government also notes that the Original adjudicating authority in para 50 has noted *"I believe that the notice is innocent and has committed the above offence out of mere ignorance of law of the land, i.e. India and she brought the impugned goods from Dubai for taking the same to Nigeria."* Government therefore opines that offence has been committed due to ignorance of law.

11. The Appellate authority has allowed re-export noting

"It is observed that in Sanjay Agarwal case, GOI while allowing re-export of goods, has enumerated the reasons on account of which re-export has been allowed even though the declaration, required under section 77 of the Customs Act, was not made by the passenger in respect of said goods [para 5(g) above]. These are as follows:

(i) Passenger is not a carrier indulging in organized smuggling

(ii) Goods are not concealed in an ingenious manner

(iii) No material evidences are available on record to indicate that goods were not intended to be re-exported.

8. *In the instant case, on going through the facts of the case, it is observed that the jewellery and fabrics were brought by the passenger from Dubai and she intended to take the said goods to Nigeria (paras 50 & 52 of 010), passenger is found to be the owner and not a carrier (para 33 of 010), goods were found in her hand bag and were not ingeniously concealed (para 4 of the OiO). It is thus found that the appellant meets all the three criteria listed above. The adjudicating authority has specifically recorded in para 52 of his order that goods are not meant for consumption in India. The re-export of goods is, therefore, allowed.*

12. In view of the above Government opines that the facts and circumstances of the case indicate the case to be ignorance of the law rather than an attempt at smuggling. Therefore, Government is inclined to take a more slightly reasonable view in the case. The Applicant has prayed for reduction in the redemption fine and penalty and the Government is inclined to accept her plea. The redemption fine of Rs. 8,00,000/- imposed is reduced to Rs.6,00,000(Rupees Six Lakhs). The penalty of Rs.4,00,000/- is also reduced to Rs. 2,50,000/- (Rupees Two lakh Fifty thousand). Government however observes that once penalty has been imposed

under section 112(a) and (b) 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.

13. Revision application is disposed of accordingly.

Shrawan
16/03/21
(SHRAWAN KUMAR)

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

ORDER No. 78/2021-CUS (WZ) /ASRA/MUMBAI

DATED 16/03/2021

To,

1. Smt. Nwaka Beatrice Nene, c/o Shri N. J. Heera, Advocate, Nulwala Building, 41 Mint Road, Fort, Mumbai 400 001.
2. The Commissioner of Customs, CSI Airport, Mumbai.

Copy to:

1. Shri N. J. Heera, Advocate, Nulwala Building, 41 Mint Road, Fort, Mumbai 400 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.