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SPEED POST



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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. 371/28/B/15-RA/2183

Date of Issue 22.03.2024

ORDER NO. 79/2021-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 : Shri Mohamed Yousef.

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-PAX-APP-634 & 635-14-15 dated 12.01.2015 passed by the Commissioner of Customs (Appeals), Mumbai, Zone-III.

ORDER

This revision application has been filed by the Shri Mohamed Yousef (herein referred to as Applicant) against the order No. MUM-CUSTM-PAX-APP-634 & 635-14-15 dated 12.01.2015 passed by the Commissioner of Customs (Appeals), Mumbai, Zone-III.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Mohamed Yousef at the C. S. International Airport, on 25.10.2012 as he was walking out through the exit gate. Examination of his person resulted in the recovery of two gold biscuits totally weighing 233.32 grams valued at Rs. 7,11,243/- (Rupees Seven lakhs Eleven thousand Two hundred and Forty three) from his wallet.

3. After due process of the law vide Order-In-Original No. ADC/AS/ADJN/11/2013-14 dated 16.09.2013 the Original Adjudicating Authority ordered confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962, but allowed redemption of the gold on payment of Rs. 3,00,000/- (Rupees Three lakhs) as redemption fine and imposed penalty of Rs. 2,00,000/- (Rupees Two lakhs) under Section 112 (a) and (b) of the Customs Act, 1962. A penalty of Rs. 20,000/- (Rupees Twenty thousand) was also imposed under Section 114AA of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) seeking a condonation of delay of three days beyond the prescribed period of 60 days. The Commissioner (Appeals) vide Order-In-Appeal No. MUM-CUSTM-PAX-APP-634 & 635-14-15 dated 12.01.2015 rejected the appeal of the Applicant as time-barred not condoning the delay without going into the merits of the case.

5. Aggrieved with the above order the Applicant has filed this revision application seeking a condonation of delay of 32 days interalia for the following reasons;

5.1 The Applicant has filed a revision application seeking condonation of delay in filing this Appeal.

5.2 The Applicant submits since he is a NRI and stays abroad, the Revision Application could not be filed by him on time, due to his non-availability in India.

5.3 The Applicant does not stand to gain by lodging the revision application late. The Applicant submits that this delay has been caused due to reasons

beyond his control for which he is very apologetic. The delay was not caused deliberately, or on account of negligence or on account of a mala fide intention of the Applicant.

5.4 That it would not be out of place to cite hereunder the ratio laid down by the Hon'ble Supreme Court on the issue of "Sufficient Cause", in Collector, Land Acquisition, Anantnag V/s. Mrs. Katiji, reported in (1987) 2 SCC 107. The Hon'ble Supreme Court held that a liberal approach shall be adopted in condoning the delay.

5.5 The Applicant has an excellent prima facie case, and is confident in succeeding in Revision Appeal on its merits.

5.6 That it would be in the interest of justice, if the delay caused inadvertently, in the unavoidable circumstances, is condoned and the revision application is heard on merits.

5.7 In his grounds of appeal he stated that he is a non resident Indian, staying and working in Dubai. The applicant is an eligible passenger to import 1 kg of gold but he has brought only 233.32 grams of gold, valued at Rs. 7,11,243/- on which the maximum duty which he would have to pay was Rs. 71,124/- only @ 10% had he declared the said gold.

5.8 Since the Applicant is staying & working abroad, this was the reason why he filed the said Appeal, late by 3 days.

5.9 It is submitted that the Supreme Court in an order (copy enclosed) has clearly stated that ordinarily a litigant does not stand to benefit by lodging the appeal late.

5.10 The Ld. Commissioner of customs (Appeal) ought to have appreciated that it was within his powers to condone the delay of less than 30 days. Therefore, by not condoning the delayed Appeal and rejecting, the same is totally, against the law of natural justice.

5.11 Therefore, the Applicant prays that the delay of 3 days may kindly be condoned off and the case may be sent back to the Ld. Appeal authority for considering the Appeal on its merits after giving the opportunity to be heard in person to the Applicant or his authorized representative.

6. In view of the above, personal hearing in the case was held on 09.03.2021. Shri N.J. Heera, Advocate attended the said hearing on behalf of the Applicant and reiterated the submissions already made. He submitted a written submission on the matter. He requested to reduce the redemption fine and penalty as there was no concealment and passenger was an eligible person as held under para 12 of the Order in original. In his written submissions he stated that,

6.1 The impugned order passed by the Respondent is bad in law and unjust. The Appellant submits that the impugned order has been passed without giving due consideration to the documents on record and facts of the case.

6.2 The Ld. Adjudicating/Appellate Authority ought to have appreciated that the Passanger is an eligible Paasanger who is an NRI working and staying in Dubai and eligible to import 1 kg of Gold at concessional rate under Notification 12/2012.

6.3 The Ld. Adjudicating/Appellate Authority ought to have appreciated that the Respondent has clearly mentioned regarding the eligibility of Passenger on Page No.4 of Adjudication Order Para No. 12 we are reproducing here. *" Though the passenger Shri Mohamed Yousuf is eligible to import Gold under the said notification on concessional rate of duty, he was not in a position to pay duty on the said gold bars in convertible foreign currency, as mandatory under the relevant notification, as he was in possession on only 10 U.A.E Dirhams equivalent to about Indian Rs. 150/- at the time of his arrival in India, as found during the personal search in the presence of witnesses. Hence it is established that the said Shri Muhamed Yousuf did not have any intention to avail the benefit of import of Gold under the above notification and attempted to smuggle the gold bars under seizure by non declaration and non payment of duty."*

6.4 The Ld. Adjudicating/Appellate Authority ought to have appreciated that there is provision under Notification 12/2012 regarding the payment of duty in convertible foreign currency within 15 days from the date of import from his/her NRE Account which was not considered by the Respondent.

6.5 The Ld. Adjudicating/Appellate Authority ought to have appreciated that the Respondent ought to have given the customs duty in Foreign Currency instead of applicable duty at the rate of 36.05% instead of 10% which comes to around Rs. 71,000/-.

6.6 The Ld. Adjudicating/Appellate Authority ought to have appreciated that imposing redemption fine of Rs.3,00,000/- is approx. 42% and personal penalty of Rs. 2,00,000/- i.e approx.. 30% and personal penalty of Rs. 20,000/- under Sec 114(AA) which is 3% and applicable duty @36.05% (Rs. 2,56,403/-) totally amounting to Rs.7,76,403/- on goods valued at Rs. 7,11,243/- which is more than the value of goods and it is as good as denial of release.

6.7 The Ld. Adjudicating/Appellate Authority ought to have appreciated that this is the first time that the Appellant has brought this type of gold

which was not concealed and there is no previous case registered against him.

The Applicant pleaded that the Order of Adjudicating Authority kindly be set aside and Gold may kindly be released under Notification 12/2012 at concessional rate of duty. The Redemption Fine of Rs. 3,00,000/- be kindly be reduced substantially as maximum benefit the Appellant would have got by not declaring. Personal Penalty of Rs. 2,00,000/- under Sec 112 (a) and (b) may kindly be reduced substantially. Personal Penalty of Rs. 20,000/- under Sec 114 (AA) may kindly be set aside or any other order as your kind self may deem fit and proper.

7. The Government has gone through the case records. It is observed that the Appeal was filed before the Appellate authority within the condonable period. However the Appeal was rejected by the Commissioner (Appeals) on the grounds that no reasons were given by the Applicant for delay in filing the Appeal. Government however opines that the observations of the Apex Court on the issue of "Sufficient Cause", in Collector, Land Acquisition, Anantnag V/s. Mrs. Katiji, relied by the Applicant above, far outweighs the reasons for which the Appeal was rejected. To quote *"Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties."*

8. In his grounds of the revision Application the Applicant has stated that he is an NRI and staying in Dubai. The Revision Application could not be filed by him on time, due to his non-availability in India. Government therefore observes, as the Appeal was filed within condonable limits, justice would be served when the Appeal is decided on merits of the case. The delay in filing the revision application is condoned and the case is taken up for a decision on merits.

9. Government notes that the Applicant did not declare the gold biscuits as required under section 77 of the Customs, Act, 1962 and was intercepted at the exit. Therefore the confiscation of the gold biscuits is justified. Once the gold 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. As the Applicant did not declare the gold as required under section 77 of the Customs Act, 1962, he is not eligible for the benefit of Notification 12/2012 Cus dated 17.03.2012.

10. Government however notes that the gold biscuits were recovered from the Applicants wallet, and there is no allegation that the gold biscuits were ingeniously concealed. The Applicant is an eligible passenger to import gold. The quantity of gold under import is small. There are no allegations that the Applicant is a habitual offender and was involved in similar offences earlier. The facts of the case indicate that it is a case of non declaration of gold, rather than a case of smuggling for commercial considerations. Under the circumstances, the seriousness of the misdemeanor is required to be kept in mind when imposing quantum of fine and penal liabilities.

11. The Applicant has prayed for reduction of redemption fine and penalty. The Government notes that the redemption fine of Rs. 3,00,000/- (Rupees Three lakhs) on gold valued at Rs. 7,11,243/- (Rupees Seven lakhs Eleven thousand Two hundred and Forty three) is more than 40% and the penalty of Rs. 2,00,000/- imposed is 28% of the value of the gold. Government opines a reasonable reduction is due in the interest of justice. The redemption fine is accordingly reduced to Rs. 1,50,000/- (Rupees One lakh Fifty thousand) The penalty imposed is also reduced to Rs. 70,000/- (Rupees Seventy Thousand) under Section 112 (a) and (b) of the Customs Act,1962.

12. A penalty of Rs. 20,000/- (Rupees Twenty thousand) has also been imposed under Section 114AA of the Customs Act,1962. However in this respect 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. Therefore, the penalty of Rs. 20,000/- (Rupees Twenty 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. 79 /2021-CUS (WZ) /ASRA/MUMBAI

DATED 16-03-2021

To,

1. Shri Mohamed Yousef, Yousef Manzil, Bunder Road, 5 cross, Bhatkal, N.K., Karnataka - 581 320..
 2. The Pr. Commissioner of Customs, C. S. International Airport, Mumbai.
- Copy to:
3. Shri N. J. Heera, Advocate, Nulwala Building, 41 Mint Road, Fort, Mumbai 400 001..
 4. Sr. P.S. to AS (RA), Mumbai.
 5. Guard File.
 6. Spare Copy.