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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. 371/11 to 16/B/16-RA / 2101

Date of Issue 20.11.2018

ORDER NO. ⁸¹⁵⁷/₈₂₀2018-CUS (SZ) / ASRA / MUMBAI/ DATED 18.09.2018 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 : 1. Shri Pradip C. Jagada,
2. Smt. Bharti Jagada,
3. Shri Dharmendra Jagada,
4. Shri Viki Subhash Ghaghda,
5. M/s Mital Jewellers, Proprieter(Smt. Bharti Jagada)
6. M/s Mital Jewellers(Shri Pradip C. Jagada)

Respondent : Commissioner of Customs, Ahmedabad.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. AHD-CUSTM-000-APP-154-161-15-16 dated 02.11.2015 passed by the Commissioner of Customs (Appeals), AHMEDABAD.

ORDER

This revision application has been filed by 1. Shri Pradip C. Jagada, (Applicant No. 1), 2. Smt. Bharti Jagada, (Applicant No. 2), 3. Shri Dharmendra Jagada, (Applicant No. 3), 4. Shri Viki Subhash Ghaghda, (Applicant No. 4), 5. M/s Mital Jewellers, Proprieter(Smt. Bharti Jagada) (Applicant No. 5), and 6. M/s Mital Jewellers((Shri Pradip C. Jagada) (Applicant No. 6) against the Order in Appeal AHD-CUSTM-000-APP-154-161-15-16 dated 02.11.2015 passed by the Commissioner of Customs (Appeals), Ahmedabad. Since a common issue is involved in all these Revision Applications and as they are being represented by the same advocate Shri O. M. Rohira, these Revision Applications are being disposed by a common order.

2. Brief facts of the case are that Directorate of Revenue Intelligence, Ahmedabad Zonal Unit received Intelligence that one lady and two male persons were arriving from Dubai to Nepal by Air and will be reaching Ahmedabad through land route from Kathmandu via Lucknow, Agra and Jaipur where they would be received by one Shri Pradip Jagada. The three persons were reportedly related to Applicant No. 1.

3. Accordingly, Officers of Directorate of Revenue Intelligence kept a watch and intercepted the said vehicle and the passengers. Enquiries revealed that Applicant No. 1 came to receive them, viz, his wife Smt. Bharti Jagada (Applicant No. 2), his son Shri Dharmendra Jagada (Applicant 3) and his relative Shri Viki Subhash Ghaghda (Applicant No. 4). The passengers informed that they travelled by air from Dubai to Kathmandu (Nepal) and from Kathmandu via land route through Lucknow-Agra-Jaipur, they reached Ahmedabad. They were taken to the Office of the Directorate of Revenue Intelligence, where baggage and persons were examined.

4. Search of the baggage and person of Applicants No. 3 & 4, baggage resulted in the recovery of Fourteen gold bars totally weighing 1632 grams totally valued at R. 49,51,428/- (Rupees Forty Nine Lakhs Fifty one thousand Four hundred and twenty eight). A further search of their baggage and the Home theatre carried

by then resulted in the recovery of 33 packets of rough diamonds of different types, determined to be 54605 carats valued at Rs. 2,42,38,700/- (Rupees Two crore Forty Two lakhs Thirty eight thousand Seven hundred). Applicant No. 3 informed that he had purchased the above 14 gold bars at Dubai as per the directions of his father, Applicant No. 1 and that he did not have the invoice for the same. The Appellant 3 also informed that the rough diamonds were obtained from one person named Shri Paresh as per his relative's (i.e., Appellant 1's) direction and he did not have the documents for the same. Appellant 3 informed that though he was well aware that 'Kimberly Process Certificate' was required for rough diamonds he was not in possession of the same. Shri Pradip Jagada, Applicant No. 1 informed that his son, Appellant 3, had purchased 14 gold bars from Dubai as per his directions for sale in India. He further informed that the rough diamonds were also purchased by his son from Dubai, which belonged to one Shri Dharmesh and his son was only a carrier of the same. He added that neither his son, nor he is in possession of any documents with regard to go diamonds. Appellant 3 also informed that, he did not declare the gold or diamonds either to Nepal Customs authorities or Indian Customs authorities.

5. Further investigations and follow-up actions by the officers of DRI resulted in searches conducted on the premises of M/s Mital Jewellers, Rajkot which was managed by Smt. Bharti Jagada as proprietor and authorized signatory Shri Pradip Jagada which resulted in the recovery of 1401.33 grams of gold jewelry valued at Rs. 35,03,325/- (Rupees Thirty Five lakhs Three thousand Three hundred and twenty five). Shri Pradip Jagada presented bills/invoices of the firm towards the purchases , but the owners of the said firms denied any sale of the gold jewelry to M/s Mital Jewellers. Hence the said gold recovered from the premises of M/s Mital Jewellers was also placed under seizure under the provisions of Section 110 of the Customs Act,1962.

4. After due process of the law vide Order-In-Original No. 40/JC-AK/PALDI/O & A/2015 dated 17.03.2015 the Original Adjudicating Authority ordered absolute confiscation of the impugned 14 gold bars weighing 1632.9 grams and 54605 carats of rough diamonds both totally valued at Rs. 2,42,38,700/- (Rupees Two crores Forty two lakhs Thirty eight thousand Seven hundred) and the music

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system. A penalty of Rs. 25,00,000/- each was imposed on Applicant No.1, 2, 3 and 4 under Section 112 (a) of the Customs Act,1962. The Vehicle used for transport of the gold and rough diamonds was also ordered for confiscation.

4.2 The Original Adjudicating Authority also confiscated the gold jewelry weighing 1401.33 grams totally valued at Rs. 35,03,325/- seized from the premises of M/s Mital Jewellers, but allowed redemption of the same on payment of redemption fine of Rs. 5,00,000/- (Rupees Five lakhs) under section 125 of the customs Act,1962 and imposed a penalty of Rs. 3,00,000/- (Rupees Three lakhs) each on Smt. Bharti Jagada being its proprietor and authorized signatory Shri Pradip Jagada.

5. Aggrieved by the said order, the applicants filed appeals before the Commissioner (Appeals) who vide Order-In-Appeal No. AHD-CUSTOM-000-APP-154-161-15-16 dated 02.11.2015 was pleased to reject the appeal filed by the Applicants.

6. The applicants has filed these six Revision Applications alongwith a condonation of delay Application pleading that the delay in filing the Revision Application by 12 days may be condoned as there were six applicants and as some of them were ill, and therefore they could not file the applications on time. The Revision Application has been filed interalia pleading on the following grounds that;

6.1 The order of the lower authority is against the spirit of Baggage rules,1998 and the same deserves to be set aside in the interest of justice; The Petitioner humbly submits that all the allegations levelled against the petitioner in the Show Cause Notice and the Order in Appeal are base less and have no relevance in law the allegations, however strong cannot take place of proof; The Applicant submits that he had gone to receive his relatives, It is wrongly stated in the Order that the goods belonged to Shri Pradip and He had no knowledge of the import of Gold & Rough Diamonds by the 3 passengers. The Applicants statement was recorded forcibly wherein he had wrongly admitted that all the goods belonged to him and he was master of all the 3 passengers; The Applicant No. 1 had already

retracted his original statement in the Court immediately after getting the bail. Hence the justice demands that most lenient view be taken while deciding the case and utmost justice be done to the petitioner particularly, as he has been falsely implicated in this case without any fault on his part. In fact the department had not proved in any manner whatsoever and that the Officers had not made any proper homework with concrete evidence that the petitioner had actually tried to smuggle the goods through carriers as wrongly alleged. Hence this charge has also no weight at all. that Innova car seized may also be ordered to be released unconditionally as it was used to receive his wife, son & relative.

6.2 The Applicant No. 2 also submitted that the DRI officers had cooked up the story just to make a successful case; She had only accompanied her son and a relative at the time of their arrival at Katmandu and had no knowledge of the import of Gold & Rough Diamonds; her statement was recorded forcibly and she had already retracted her statement; Moreover she was eligible for benefit of the Notification 12/2012-Cus for concessional duty having stayed abroad for more than 6 months;

6.3 The Applicant No. 3 also submitted that the DRI officers had cooked up the story just to make a successful case; he had gone abroad on his own; he is the real owner of the goods; his statement was recorded forcibly and he had already retracted the statement; Moreover the rough diamonds of very low quality and have been valued much higher than its actual value, hence KP certificate was not required; he was eligible for benefit of the Notification 12/2012-Cus for concessional duty having stayed abroad for more than 6 months;

6.4 The Applicant No. 4 also submitted that the DRI officers had cooked up the story just to make a successful case; that all the three passengers had gone abroad on their own; he is the real owner of the goods seized from his possession; his statement was recorded forcibly and he had already retracted the statement; Moreover the rough diamonds were of very low quality and were supposed to be used for industrial purposes and have been valued much higher than its actual value, the actual value of the diamonds

are approximately Rs. 80 lakhs as these can be used only for industrial use; As the said diamonds were neither restricted banned or prohibited, the Applicant pleaded for redemption of the diamonds under section 125 of the Customs Act,1962;

6.5 The Revision Applicants cited case laws in support of their case and prayed for setting aside the Order in Appeal and release the goods on redemption fine, the personal penalty be waived or reduced and the fine on the Innova car be waived and the bond cancelled.

7. The Applicants No. 5 and 6 have filed the Revision Application interalia on the following grounds that;

7.1 The order of the lower authority is against the spirit of the Customs Act,1962 and the same deserves to be set aside in the interest of justice; The Petitioner humbly submits that all the allegations levelled against the petitioner in the Show Cause Notice and the Order in Appeal are base less and have no relevance in law the allegations, however strong cannot take place of proof; The Petitioner humbly submits that he had enclosed the purchase bills of seized gold found in the premises of M/s Mital Jewelers, Rajkot which were dismissed by the department as paper transaction only. However, it is submitted that the return of the money paid in cash by the sellers was not backed by a receipt; this proves that the sellers of the gold jewelry were forced to implicate the petitioners as the bills and jewelry was actually handed over and the payment was made through RTGS and received by the sellers; It is also not known as to why duty has been imposed on the gold when this is a town seizure and not a baggage case.

7.2 The Revision Applicants cited case laws in support of their case and prayed for setting aside the Order in Appeal and release the gold jewelry and the Redemption fine and Penalty be waived or reduced.

8. A personal hearing in the case was held on 19.09.2018, the Advocate for the respondent Shri O. M. Rohira attended the hearing he re-iterated the submissions filed in Revision Application pleaded for a lenient view in deciding the

case and the penalty be reduced. Nobody from the department attended the personal hearing.

9. The Government has gone through the facts of the case. In the interest of justice, delay in filing these six Revision applications was condoned and revision applications are now being decided on merits.

10. It is a fact available on record that the Applicant No. 2 and 3 have purchased the gold bars from Dubai on the directions of The Applicant No. 1. The Applicants in their initial statements have admitted to purchasing the gold from Dubai in cash. It is clear that the Applicants had taken this long route from Dubai to Nepal and then drive into India and Ahmedabad specifically with the intention to avoid detection and evade the payment of duty. Instead of taking a direct flight from Dubai to Ahmedabad the Applicants have taken a longer route, so as to avoid the Ahmedabad Airport where a lookout notice was put out for their interception. The Applicants have not declared the gold and the diamonds to the customs authorities. The Applicant has therefore has blatantly tried to smuggle the gold into India in contravention of the provisions of the Customs, 1962. The release on concessional rate of duty also cannot be entertained as the Applicant has not declared the gold and diamonds as required under Section 77 of the Customs Act, 1962. The said offence was committed in a premeditated and clever manner and elaborately planned and clearly indicates mensrea. The Applicants had no intention of declaring the gold and diamonds to the authorities and while travelling from Kathmandu to Lucknow and on crossing the border they have not declared the same to the Customs Authorities and had they not been intercepted, the illegal import of gold and diamonds would have gone un noticed Applicant would have taken out the gold without payment of customs duty.

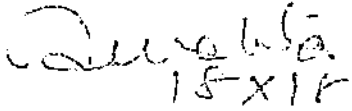
10. The above acts have therefore rendered the Applicants liable for penal action under section 112 (a) of the Customs Act, 1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed a penalty. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority. Further in respect of the gold jewelry seized from the premises of the M/s Mital Jewellers the

Government observes that the sellers of the gold jewelry has not backed the sale of the gold jewelry to M/s Mital Jewellers, Thus making the transaction suspect. As M/s Mital Jewellers have not been able to prove the legitimate import of the said gold jewelry the gold has been rightly confiscated under section 111(d) and (l) of the Customs Act, 1962. The gold has also been rightly allowed to be redeemed on appropriate redemption fine and penalty.

11. In view of the above the Government finds no reason to interfere with the impugned Order in Appeal. The Revision Application filed by the Applicants No. 1,2,3, 4, 5 and 6 are therefore liable to be dismissed.

11. The instant six Revision application are accordingly dismissed and the impugned Order of the Commissioner (Appeals) order no. AHD-CUSTOM-000-APP-154-161-15-16 dated 02.11.2015 is upheld in its entirety.

12. So, ordered.



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

ORDER No. ⁸¹⁵~~815~~/2018-CUS (SZ) /ASRA/

DATED 18-09-2018

To,

1. Shri Pradip Jagada
2. Smt. Bharti Jagada,
3. Shri Dharmendra Jagada,
4. Shri Viki Subhash Ghaghda,
5. M/s Mital Jewellers, Proprieter(Smt. Bharti Jagada)
6. M/s Mital Jewellers((Shri Pradip C. Jagada)

C/o Shri M. G. Rohira, Advocate,
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Mumbai -52.

Copy to:

7. The Commissioner of Customs (Airport), CSI Airport, Ahmedabad
8. The Commissioner of Customs (Appeals), Ahmedabad.
9. Sr. P.S. to AS (RA), Mumbai
10. Guard File.
11. Spare Copy.