

REGISTERED  
SPEED POST

GOVERNMENT OF INDIA  
 MINISTRY OF FINANCE  
 (DEPARTMENT OF REVENUE)  
 8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
 Mumbai-400 005

F.No. 371/24/B/15-RA

2761

Date of Issue

08/05/21

ORDER NO. 90/2021-CUS (WZ)/ASRA/MUMBAI DATED 30.3.2021 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 Mubarak Hussain Ibrahim

Respondent : Pr. Commissioner of Customs, (Airport), Mumbai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal MUM-CUSTM-PAX-APP-652/14-15 dated 02.02.2015 passed by the Commissioner of Customs (Appeals), Mumbai-III.



ORDER

This revision application has been filed by Shri Mubarak Hussain Ibrahim (herein after referred to as the Applicant) against the Order in appeal No. MUM-CUSTOM-PAX-APP-652/14-15 dated 02.02.2015 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated the facts of the case are that the Applicant, Shri Mubarak Hussain Ibrahim arrived from Riyadh on 29.10.2013. The officers of Customs intercepted him as he cleared himself through the green channel. As the metal detector indicated presence of metal on his body, he was taken for a personal examination. The personal examination resulted in the recovery of one gold bar totally weighing as 1000 grams and valued at Rs. 27,56,160/- ( Rupees Twenty seven lakhs Fifty six Thousand and One hundred and sixty ). The gold bar was recovered from a specially stitched underwear on his body.

3. The Original Adjudicating Authority vide Order-In-Original No. ADC/ML/ADJN/56/2014-15 dated 28.08.2014 ordered confiscation of the impugned gold bar weighing 1000 grams, but allowed redemption of the same on payment of Rs. 5,00,000/- (Rupees Five lakhs) and imposed penalty of Rs. 2,50,000/- ( Rupees Two lakhs Fifty thousand ) under section 112 (a) and (b) of the Customs Act, 1962 on Applicant. A penalty of Rs. 10,000/- ( Rupees Ten thousand ) under section 114AA of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. MUM-CUSTOM-PAX-APP—652/14-15 dated 02.02.2015. The Appellate Authority rejected the Appeal.

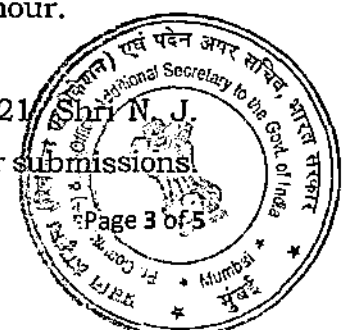
5. Aggrieved with the above order the Applicant has filed this revision application inter alia on the grounds that;

5.1 The Applicant is the owner of the gold brought by him.

5.2 The Applicant has purchased the said gold from M/s Raza's Jewels Center Co Ltd Vide purchase receipt No 1111 dated 22.09.2013



- 5.3 The Ld Adjudicating Authority has not disputed the authenticity of the Invoice.
- 5.4 The Ld Adjudicating Authority ought to have appreciated that since the Local Market Value (LMV) is not taken into consideration by the Department and only the CIF value is mentioned for the gold bought by the Applicant the imposition of heavy fine and penalty, is totally unjustified and uncalled for.
- 5.6 The Ld Adjudicating Authority in view of its own discussion and findings in its Order dated 28.08.2014 at Para 3.13 of page 16 has observed viz “ .....I find that the goods are not ingeniously concealed and in the facts and circumstances of the case it has not been proved that the Pax is professional carrier in this case. I find that the Pax has claimed the ownership of the gold. I find that the impugned goods are not prohibited for use by the society and release of the goods will not cause any harm to the society and its import in any circumstances would be danger or be detrimental to health, welfare or morals of the people as whole. In view of the above, I consider allowing benefit of doubt to the Pax Therefore, considering the facts and circumstances of the case and in the interest of justice I am inclined to accept the plea of the Pax, Mr. Mubarak Hussain and consider the release of gold bars after imposing fine under Section 125 of the Customs Act, 1962.....”. Even in view of the said opinion, the Ld. Adjudicating Authority went ahead with the imposition of such heavy fine and personal penalty on the CIF value of the gold bought by the Applicant, deviating from the established norms and practices adopted by the department in the similar type of cases.
- 5.7 The Applicant relies upon various orders passed by the various authorities in similar type of cases where Nominal Fine and Personal Penalty is imposed (enclosed).
- 5.8 The Applicant has paid all the custom dues as per the orders of the Ld. Adjudicating Authority before filing of this Revision Appeal.
- 5.9 The Applicant prays: The heavy redemption fine and penalty on the said gold bars may kindly be set aside or substantially reduced. An other orders or relief as may be deemed fit and proper by your honour.
6. Personal hearings in the case was scheduled on 16.03.2021. Heera, Advocate attended the said hearing and reiterated the earlier submissions.

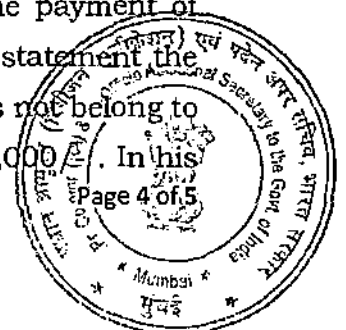


He requested to reduce the Redemption fine and Penalty as there was no ingenious concealment. Nobody attended the hearing on behalf of the respondent.

7. The Government has gone through the facts of the case, The officers of Customs intercepted the Applicant as he cleared himself through the green channel. He was taken for a personal examination as the metal detector indicated presence of metal on his body. The personal examination resulted in the recovery of one gold bar totally weighing as 1000 grams and valued at Rs. 27,56,160/- ( Rupees Twenty seven lakhs Fifty six Thousand and One hundred and sixty ) and the gold bar was recovered from a specially stitched underwear on his body. The Applicant did not file a proper declaration as required under section 77 of the Customs Act, 1962. The confiscation of the gold is therefore justified.

8. The original adjudicating authority in its order dated 28.08.2014 ordered confiscation of the impugned gold but allowed its redemption quoting *"I find that the goods are not ingeniously concealed and in the facts and circumstances of the case it has not been proved that the Pax is professional carrier in this case. I also find that the Pax, Mr. Mubarak Hussain has submitted copy of purchase bill to claim ownership, I find that the impugned goods are not prohibited for use by the society and release of the goods will not cause any harm to the society and its import in any circumstances would be danger or be detrimental to the health, welfare of the people as whole. In view of the above, I consider allowing benefit of doubt to the Pax. Therefore, considering the facts and circumstances of the case and in the interest of justice I am inclined to accept the plea of the Pax, Mr Mubarak Hussain Ibrahim and consider the release of gold bars after imposing fine under Section 125- of the Custom Act, 1962."* Government observes that the Original Adjudicating Authority has given adequate reasons and has used his discretion in allowing redemption of the gold. The Appellate authority has upheld the redemption and rejected the Appeal of the Applicant seeking reduction of redemption fine and penalty.

9. The Applicant has pleaded for reduction of fine and penalty. Government observes that the gold bar though not ingeniously concealed as held by the original adjudicating authority it was intended to be cleared without the payment of Customs duty. The facts of the case also state that in his initial statement the Applicant has categorically stated that the impugned gold bar does not belong to him but has been brought for a monetary consideration of Rs. 10,000/-. In this



later statements he has stated that he brought the impugned gold bar after taking a loan of Rs. 13.5 lakhs from his friend Mr. Syed Arman. Taking into consideration the fact that the Applicant earns 12,500 Thai Bhat per month at the material time the receipt of a loan of Rs. 13.5 lakhs does appear to be credible. The Applicant is also not an eligible passenger to import gold. Be that as it may the original adjudicating authority has allowed redemption of the gold which has been upheld by the Appellate Authority.

10. Keeping the above facts and circumstances of the case in mind Government is not inclined to extend further relief by reducing the redemption fine and penalty. The order of the Appellate authority is therefore liable to be upheld. 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.

11. Revision application is disposed of accordingly.

*Shrawan*  
20/3/21  
( SHRAWAN KUMAR )

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

ORDER No. 90 /2021-CUS (WZ) /ASRA/

DATED 30.03.2021

**ATTESTED**

To,

1. Shri Mubarak Hussain Ibrahim, R/o 1328, 8<sup>th</sup> cross, Gangondanahalli, Bangalore – 560 039.
2. The Pr. Commissioner of Customs, CSI Airport, Sahar, 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.

अधीक्षक

Superintendent  
रिवीजन एप्लीकेशन  
Revision Application  
मुंबई इकाई, मुंबई  
Mumbai Unit, Mumbai

