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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

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F.No. 371/25/B/15-RA / 271 D

Date of Issue 12.04.2021

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ORDER NO. 91 / 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.

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Applicant : Shri Nowmal Kilacha Parambhat

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-650/14-15 dated 30.01.2015 passed by the Commissioner of Customs (Appeals), Mumbai-III.

ORDER

This revision application has been filed by Shri Nowmal Kilacha Parambhat (herein referred to as Applicant) against the order MUM-CUSTOM-PAX-APP-650/14-15 dated 30.01.2015 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated facts of the case are that the Officers of AIU Customs intercepted Shri Nowmal Kilacha Parambhat at the CSI Airport, Mumbai on 28.02.2014 after he had cleared himself at the green channel. He was subjected to a personal search which resulted in the recovery of 2 gold bars totally weighing 2000 grams valued at Rs. 53,00,390/- ( Rupees Fifty three lakhs Three hundred and Ninety ). The gold was recovered from the socks worn by the Applicant.

3. After due process of the law vide Order-In-Original No. ADC/ML/ADJN/77/2014-15 dated 14.10.2014 the Original Adjudicating Authority ordered confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962, but allowed redemption on payment of Rs. 10,00,000/- (Rupees Ten lakhs) and imposed penalty of Rs. 5,00,000/- (Rupees Five lacs) under Section 112 (a) and (b) of the Customs Act,1962.

4. Aggrieved by this order the applicant filed an appeal with the Commissioner of Customs (Appeals), Commissioner (Appeals) vide his order MUM-CUSTOM-PAX-APP-526-527/14-15 dated 12.11.2014 rejected the appeal of the Applicant.

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

5.1 Passenger Mr. Nowmal Kilacha Parambhat, holding Indian passport No. G 8061351 arrived from Emirates Flight No. EK 500 on 28.02.2014 and bought with him two gold bars of 1 Kgs each totally weighing 2 kgs and valued at Rs. 53,00,390/- and did not declare the same under Section 77 of the Customs Act, 1962 and the same was seized by the Customs department under panchanama dated 28 02.2014.

5.2 The department issued show cause notice to the Applicant and the same was replied by the Advocate of the Applicant by his letter dated 29.07.2014. The Applicant craves leave to refer to and rely upon the same when produced.

5.3 The department granted personal hearing on 08.10.2014. Advocate Shri N J Heera appeared for personal hearing and reiterated the written submission.

5.4 The Adjudication Order was issued, whereby the goods was confiscated by the department after following due process but option was given to redeem the goods, in lieu of confiscation, on payment of a fine Rs.10,00,000/- under Section 125 of the Customs Act, 1962 and applicable Customs duty and imposed penalty of Rs. 5,00,000/-on the Applicant u/s. 112 (a) and (b) of the Customs Act, 1962. The Applicant craves leave to refer to and rely upon the same when produced. The Applicant craves leave to refer to and rely upon the same when produced.

5.5 The Applicant submits that being aggrieved by the order passed by the Adjudicating Authority, the Applicant filed Appeal before the Respondent. The Applicant craves leave to refer to and rely upon the same when produced.

5.6 The Applicant submits that the Ld. Respondent after analyzing the facts and circumstances, upheld the order of the lower authority as legal and proper.

5.7 The Applicant being aggrieved by the said Order-in-Appeal is filing the present Revision Application on the following amongst other grounds. which are contended without prejudice to each other.

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

b) 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.

- c) The Applicant submits that the impugned order reflects a total bias against the Applicant on the part of the Ld. Respondent.
  - d) The Applicant submits that the Ld. Respondent did not take into consideration the fact that the Applicant on its own deposited the 10% duty to the government treasury as he is an eligible passenger.
8. The Applicant reserves the right to add, alter, modify all or any of the submissions made in the present appeal at the time of hearing.

5.8 The Applicant finally submitted that the impugned Order in Appeal be modified to the extent that the heavy fine and penalty imposed on the Applicant be reduced substantially considering the facts on record. Or any other orders or relief as may be deemed necessary.

6. A personal hearing in the case was scheduled in the case on 16.03.2021 Shri N. J. Heera, Advocate attended the said hearing and reiterated the submissions. He requested to reduce the Redemption fine and Penalty as he is an eligible passenger to import gold. No one attended the hearing from the department.

7. The Government has gone through the facts of the case, the revision Application has been filed after a delay of 9 days, as it has been filed within condonable limits the Government condones the delay and proceeds to decide the case on merits. the Applicant was intercepted after he had crossed the green channel without filing any declaration as mandated under section 77 of the Customs Act, 1962. On personal examination the officers recovered 02 gold bars of 1kg each from the socks worn by him.

8. In his Revision Application, the Applicant has pointed to the fact that the Applicant is an eligible passenger to import gold and has pleaded for reduction of redemption fine and penalty. It is a matter on record that the impugned gold was recovered from the socks worn by the Applicant. It is thus clear that the concealment was purposeful in order to avoid detection by the Customs authorities. The manner of concealment also indicates mensrea, and if he was not intercepted the Applicant would have succeeded in smuggling the gold into India. The Applicant had no intentions of declaring the gold.

9. Government observes that the Applicant was well aware that gold is not only a dutiable item and needs to suffer customs duty for its import into India, but gold is also subjected to certain restriction with conditions and eligible agencies / persons can only bring the same into India. The ingenious concealment and manner of opting for the green channel, clearly indicates that he was planning to escape the payment of customs duty and smuggle the gold into India. The impugned gold was discovered only after the Applicant was intercepted and subjected to a search.

10. In addressing the Applicants pleadings for reduction of redemption fine and the penalty, the Appellate authority, has observed,

*“ The Appellant has cleared through the customs Green Channel. It is on record that search of his person led to the recovery of two gold bars of 1 Kg. each valued at Rs. 53,00,390/- ( Rupees Fifty Three Lakh Three Hundred Ninety) concealed inside two socks worn by him. The act of non-declaration was thus deliberate and not of ignorance of Law. The appellant has not disputed these facts. The impugned goods were not declared by the appellant as envisaged under section 77 of the Customs Act, 1962.*

*7. The appellant has pleaded for substantial reduction in fine and penalty stating that the said gold is brought for the marriage of his unmarried sister and brother. The act of concealment with an attempt to bring in the gold without payment of duty does not justify the circumstances. I find that the fine imposed by the lower authority is well within the discretionary amount permissible under section 125 of the Customs Act, 1962. I further find that the appellant has deliberately evaded payment of duty on the impugned goods by the acts concealment and non-declaration. Since the goods were found concealed on person, I find that the penalty imposed in this case is proportionate to the gravity of the offence and cannot be said to be inconsistent either.”*

Government agrees with the above findings of the Appellate authority and does not find sufficient ground for any reduction in redemption fine and penalty

imposed keeping in mind the fact of concealment. The revision application is therefore liable to be dismissed.

12. The Revision Application is accordingly dismissed.

*(Shrawan Kumar)*  
*20/3/21*

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

ORDER No. 9 \ /2021-CUS (WZ) /ASRA/

DATED 30-03-2021

To,

1. Shri Nowmal Kilacha Parambhat, Kilacha Parambhat House, PO Pathiriyad Kuzhiyilpeedika, Kannur Dist., Kerala – 670 741.
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.