

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.371/26/B/15-RA/2520

Date of Issue 05.04.2021

ORDER NO. <sup>93/2021</sup> 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 Maruthumbail Abbas Abdul Khadar.

Respondent : Pr. Commissioner of Customs, CSI, Mumbai.

Subject : Revision Application filed, under Section 35EE of the  
Central Excise Act, 1944 against the Order-in-Appeal No.  
No. MUM-CUSTOM-PAX-App-651/14-15 dated 02.02.2015  
passed by the Commissioner of Central Excise (Appeals),  
Mumbai Zone-I.

ORDER

This revision application has been filed by Shri Maruthumbail Abbas Abdul Khadar, ( hereinafter as the Applicant ) the Order in Appeal issued by the Commissioner of Customs (Appeals) No. MUM-CUSTOM-PAX-App-651/14-15.

2. Brief facts of the case are that the Applicant arrived from Dubai on 01.12.2013 and was intercepted by the officers of customs as he opted for the Green Channel. The officers noticed a suspicious image on the monitor of the screening machine which indicated the presence of metal in his hand bag. On enquiry the Applicant denied any presence of contraband. The declaration card in the column total value of dutiable goods was blank. The examination of his hand baggage resulted in the recovery of one gold bar weighing one kg. valued at Rs. 26,12,340/- ( Rupees Twenty six lakhs Twelve thousand Three hundred and forty).

3. Vide order dated ADC/ML/ADJN/71/2014-15 dated 30.09.2014 the Original Adjudicating Authority ordered confiscation of the gold but allowed redemption of the same on payment of Rs. 5,00,000/- and imposed a penalty of Rs. 2,50,000/- under a section 112 (a) of the Customs Act, 1962. A penalty was of Rs. 10,000/- was also imposed under section 114AA of the Customs Act, 1962.

4. Being aggrieved with the order the Applicant filed an Appeal with the Commissioner Appeals who vide his order No. MUM-CUSTOM-PAX-App-651/14-15 dated 02.02.2015 rejected the Appeal.

5. Being aggrieved by the order the Applicant has filed this revision application on the following grounds.

- 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 is an eligible passenger and bought the gold as per the norms and procedures established by the department and there was only the problem of him not able to locate the gold declaration counter to pay the duty applicable as he had with him the required amount of foreign currency to make the payment of duty.

e) 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.

f) The Applicant humbly prays that the impugned Order-in-Appeal No. MUM-CUSTOMS-PAX-APP-651114-15 be modified to the extent that the heavy fine and penalty imposed on the Applicant be reduced substantially or totally waived considering the facts on record. Such other orders and reliefs as may be deemed necessary.

6. Personal hearings in the case was scheduled on 16.03.2021. Shri N. J. Heera, Advocate attended the said hearing and reiterated the earlier submissions. He requested to reduce the Redemption fine and Penalty as the applicant was an eligible passenger to import gold. 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 an examination as the metal detector indicated presence of metal in his handbag. As the enquiries did not elicit a proper response and the examination resulted in the recovery of one gold bar totally weighing as 1000 grams and valued at Rs. 26,12,340/- ( Rupees Twenty six lakhs Twelve thousand Three hundred and forty). The Applicant did not file a proper declaration as required under section 77 of the Customs Act, 1962 and denied carrying the gold. 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 also find that vide letter dated 03.12.2013 the Pax informed that he was a N.R.I. staying in Dubai since last 04 years and for the subject visit after a stay of 1 1/2 years in Dubai he was carrying the gold along with US\$ 4450 for payment of Customs*

*duty. I find that the passenger has claimed that he is an eligible passenger and also submitted copies of the leaves of Passport in his support. I also find that the gold was not ingeniously concealed and in the facts and circumstances of the case it has not been proved beyond reasonable doubt that he is a professional carrier. 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. 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, 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 aspect of eligibility of the Applicant has also been considered in allowing redemption. The Appellate authority has upheld the redemption and rejected the Appeal of the Applicant seeking reduction of redemption fine and penalty.

9. The Applicant though, has pleaded for reduction of fine and penalty. Government observes that the in his statement dated 01.12.2013 the Applicant has stated that "*as he did not have sufficient money to purchase the air ticket, he sought monetary help from one of his friend, Mr. Abdulla in Dubai, who suggested him to carry gold for him in return of Rs. 30,000/- as monetary consideration and free air ticket to India and he agreed for the said proposal; That Mr. Abdulla had given him the seized gold bar along with purchase invoice no. 19667 dated 30.11.2013 issued by M/s Gold Point Jewelers (L.L.C.), Deira Dubai showing his name as a purchaser; that Mr Abdulla had also suggested that he could clear the gold through Customs on payment of duty since he was returning after one and a half year; that he knew Mr. Abdulla for last one month but he did not know Mr. Abdulla's full name and address in India."* In view of the above Government concludes that the Applicant was not the owner of the gold and was carrying it for his friend Shri Abdulla for monetary consideration. 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.

  
30/3/21  
( SHRAWAN KUMAR )  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. 3/2021-CUS (WZ) /ASRA/

DATED 30.03.2021

To,

1. Shri Maruthumbail Abbas Abdul Khadar, Maruthumbail House, Kalakatta P. O., Via Vidyanagar, Kasagod, Kerala-671123.
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.