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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.371/23/B/15-RA/2601

Date of Issue 09.04.2021

ORDER NO. ^{9H/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 Miraj Siraj Mohammed.

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-692/14-15 dated 05.03.2015
passed by the Commissioner of Central Excise (Appeals),
Mumbai Zone-I.

ORDER

This revision application has been filed by Shri Miraj Siraj Mohammed, (hereinafter as the Applicant) the Order in Appeal issued by the Commissioner of Customs (Appeals) No. MUM-CUSTOM-PAX-APP-692/14-15 dated 05.03.2015 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-I.

2. Brief facts of the case are that the Applicant arrived from Dammam on 10.12.2013 and was intercepted by the officers of customs as he opted for the Green Channel. The officers noticed a beep was sounded when the hand held metal detector was passed over his pockets. As the Applicant denied any presence of contraband. The declaration card in the column total value of dutiable goods was blank. The personal examination resulted in the recovery of two gold bar weighing one kg. each valued at Rs. 59,44,000/- (Rupees Fifty nine lakhs Forty four thousand).

3. The Original Adjudicating Authority vide Order-In-Original No. ADC/ML/ADJN/49/2014-15 dated 18.08.2014 ordered confiscation of the impugned gold bars weighing 2 kilograms, but allowed redemption of the same on payment of Rs. 10,00,000/- and imposed a penalty of Rs. 5,00,000/- under a section 112 (a) of the Customs Act, 1962. A penalty of Rs. 100,000/- was imposed on Shri Samsuddeen Melmane Ahmed under a section 112 (a) 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 interalia on the grounds that;

- 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-CUSTOM-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.

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 pant pockets. As the enquiries did not elicit a proper response and the examination resulted in the recovery of two gold bars totally weighing as 2000 grams and valued at Rs. 59,44,000/- (Rupees Fifty nine lakhs Forty four thousand). In the column of total value of the dutiable goods was kept blank. 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 facts of the case state that the Applicant is not the owner of the gold . In his statement dated 10.12.2013, He stated that “ *he was not the owner of the seized gold bars and that his friend's brother, Mr. Shamsuddin had purchased the same and told him that he will send somebody to his house at Mangalore to take the delivery of the said two gold bars. Mr. Shamsuddin and also promised him ticket to India in consideration and had advised him not to declare the gold to Customs. To a specific question as to whether he was aware that it is an not to declare the gold brought to India he stated that he knew it to be an offence.*”

9. The statement of Mr. Shamsuddeen Melmane Ahmed was also recorded on 08.04.2014 under Section 108 of the Customs Act, wherein he interalia, stated that “ *he had purchased the said two gold bars from his earnings which he had saved from his salary earned in Saudi Arabia; that he handed over the two gold bars to Mr. Mijar Siraj Mohammed to carry the same to India and hand over the same to his wife; that he had not given any instructions to Mr. Mijar Siraj Mohammed regarding declaration of gold to Customs at Mumbai; that he might have done it so that he could save the Customs duty on his behalf and that he was aware that gold had to be declared to Customs on arrival in India.*”. 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.

10. The Applicant though, has pleaded for reduction of fine and penalty. Government observes that the Applicant has in his statement categorically stated that he was not the owner of the gold. The gold was handed over to him by his friend's brother, Shri Shamsuddeen Melmane Ahmed. Shri Shamsuddeen Melmane Ahmed has claimed ownership of the gold and it has not been disputed by the Applicant. Though the gold was not ingeniously concealed, there was an attempt to clear it without the payment of duty. The above facts also reveal that the Applicant has acted as a carrier for monetary consideration. 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.

11. Revision application is accordingly dismissed.

Shrawan
30/3/21

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

ORDER No. *94*/2021-CUS (WZ) /ASRA/

DATED *30* 03.2021

To,

1. Shri Miraj Siraj Mohammed, Hasan Manzil, Tenka Mijar, Mijar D. K. 574 225, Karnataka.
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.