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SPEED POST

F.Nos. 371/93/B/13-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 30.04.14

ORDER NO. _____ 108/14-Cus DATED 30.04.2014 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

SUBJECT : REVISION APPLICATION FILED, UNDER SECTION 129 DD OF THE CUSTOMS ACT 1962 AGAINST THE ORDER-IN-APPEAL No.MUM-CUSTM-PAX-APP-127/13-14dated 18.07.2013 passed by Commissioner of Customs (Appeals) Mumbai-III

APPLICANT : Dr. Purnima Thakran, 502, Surad Apartment, 106/13, Earand Wane, Off Ketkar Road, Opp. Shamrao Kalmadi School, Pune – 411 004.

RESPONDENT : Commissioner of Customs(Airport), Mumbai

ORDER

This revision application is filed by Dr. Purnima Thakran, C/o Patankar Legal Combines, Advocates against the order-in-appeal No.MUM-CUSTOM-PAX-APP-127/13-14 dated 18.07.2013 passed by Commissioner of Customs (Appeals) Mumbai-III with respect to order-in-original No. JC/RKK/ADJN/27/11-12 dated 22.09.2011 passed by Joint Commissioner of Customs, CSI Airport, Mumbai.

2. Brief facts of the case are that on 02.05.2010, on the basis of a tip-off, Dr. Purnima Thakran, who was about to depart for Newark on flight NO. CO-49 was intercepted by the AIU officers at CSI Airport. Examination of her checked-in baggage resulted in the recovery of one gold bar weighing 1000 gms and valued at Rs.17,65,895/-. The impugned gold was seized and the applicant's statement was also recorded. Show cause notice No. F.No. SD/INT/AIU/16/2010 AP 'B' dated 28.10.2010 was issued.

2.1 The case was adjudicated by the Joint Commissioner of Customs (Airport) who ordered confiscation of the impugned goods under section 113(d) and (h) of the Customs Act, 1962 with an option of redemption on fine of Rs.6,00,000/-. Penalty of Rs.4,00,000/- was also imposed on the applicant under section 114(i) of the ibid Act.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who rejected the same.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 129 DD of Customs Act, 1962 before Central Government on the following grounds :-

4.1 The Commissioner (Appeals) has merely reproduced the findings of the adjudicating authority without addressing the following grounds raised before her and applicant's submissions as under:

4.2 The Commissioner (Appeals) has upheld the confiscation of the gold bar as ordered by the Joint Commissioner under the provisions of section 111(d) of the Customs Act, 1962 read with Regulation 3 of Foreign Exchange Management (Remittance of Assets) Regulations, 2000 which reads as under:

Prohibition on Remittance outside India of assets held in India

Save as otherwise provided in the Act or rules or regulations made or issued thereunder, no person whether resident in India or not, shall make remittance of any asset held in India by him or by any other person:

Provided that the Reserve Bank may, for sufficient reasons, permit any person to make remittance of any asset held in India by him or by any other person.

However, both Joint Commissioner and Commissioner (Appeals) have not appreciated that the 'gold bar' forming part of the baggage of the departing passenger could not be considered as 'remittance of asset' within the meaning of Regulation 3, which reads as under:

2(v) 'Remittance of asset' means remittance outside India of funds representing a deposit with a bank or a firm or a company, provident fund balance or superannuation benefits, amount of claim or maturity proceeds of Insurance policy, sale proceeds of shares, securities, immovable property or any other asset held in India in accordance with the provisions of the Act or rules or regulations made thereunder

The Commissioner (Appeals) in para 14 of the impugned order-in-appeal has noted that transferring of assets held in India without permission of RBI is prohibited under said regulations issued under FEMA, 1999. It is relevant that the SCN did not make a case that 'export of gold' was restricted under Foreign Trade Policy or ITC(HS). The Joint Commissioner as well as the Commissioner (Appeals) has failed to appreciate that there are no restrictions on export of gold under ITC(HS) and it is freely exportable, not being specified in the export licensing schedule. This aspect has been clarified in the CBEC Circular No. 495/19/93-Cus.VI dated 06.10.1994 referred by the Commissioner in Para 12 of the impugned order-in-appeal. It is clarified that there is no value restriction on the export of gold jewellery.

4.3 The Commissioner (Appeals) has observed in para 11 and 12 of the impugned order that export of passenger's baggage is allowed under para 2.31 of the Foreign Trade Policy 2009-2014. She has also observed that there is no dispute that the gold bar was purchased from MMTC, New Delhi . However, there is no evidence to show how the acquisition was financed. The contention of sale of old ornaments is not supported by documentary evidence. As such the impugned goods cannot be considered as 'bonafide baggage' and fall in the category of commercial goods. However, this finding is presumptuous as the applicant had given details for the sources from whom she received the jewellery in her statement. She had also stated that she deputed different people and due to shortage of time she could not get any receipts. In her reply to the SCN, it was submitted that since the jewelleries were sold to small time jewelers, it was not possible for her to obtain the receipts relating to the sale of jewellery. It also should have been appreciated that the applicant is doctor of Indian origin, studied in India having earnings more than USD 10,00,000 per annum. Even otherwise, it is not uncommon in Indian household that a lady possesses 'StreeDhan' of 100 Tolas (1 Kg.).

4.4 The Joint Commissioner as well as the Commissioner (Appeals) are in error in upholding the proposition in the SCN that the gold bar was liable to confiscation under section 113(h) of the Customs Act, 1962 as it was not included or was in excess of the baggage declaration under Section 77 of the Act. The Joint Commissioner and the Commissioner (Appeals) has not appreciated that the gold bar did not attract export duty and was freely exportable and therefore declaration under section 77 was not necessary. It is also not appreciated that the prevalent practice does not require declaration by the departing passengers of goods freely exportable and not attracting export duty.

4.5 The subject gold bar is thus not liable for confiscation. Even if a contrary view was taken and the confiscation of the subject gold bar valued Rs.17,65,895 upheld, the redemption fine of Rs.6,00,000 imposed by the adjudicating authority and confirmed by the Commissioner (Appeals) in excessive and out of proportion.

4.6 The Central Government may be pleased to –

(i) Quash and set aside the order-in-appeal No.MUM-CUSTOM-PAX-APP-127/13-14 dated 16.07.2013 passed by Commissioner of Customs (Appeals), Mumbai Zone-III, with consequential relief.

(ii) In the alternative, if the confiscation of the subject gold bar is upheld

(a) Reduce the quantum of redemption fine;

(b) Set aside or reduce the quantum of penalty imposed on the applicant.

5. Personal hearing held in this case on 10.04.14 at Mumbai was attended by Shri Patankar Prashant, authorized representative on behalf of the applicant who reiterated the grounds of revision application.

6. Government has carefully gone through the relevant case records, oral & written submissions and perused the impugned order-in-original and order-in-appeal.

7. On perusal of records, Government observes that in the instant case applicant passenger was carrying 1 kg. gold bar valuing Rs.17,65,895/- while going to US. She did not declare the said gold before Customs as required under Section 77 of Customs Act 1962. The gold was in commercial quantity and cannot be treated as bonafide baggage. Applicant has also failed to give documentary evidence to show that gold was purchased from the legal source of income. Applicant has also violated FEMA provisions by not following the export procedure for export of gold since it was not bonafide baggage. As such contention of applicant do not hold good. As such, order for confiscation of gold and imposition of penalty cannot be assailed. As regards, pleading of applicant to reduce redemption fine and personal penalty, Government notes that redemption fine / personal penalty imposed is on higher side and same can be reduced. Keeping in view the overall circumstances of the case, Government

reduces the redemption fine and personal penalty to Rs.3,00,000/- and Rs.1,00,000/- respectively. The impugned order-in-appeal is modified to this extent.

8. The revision application is partially allowed in terms of above.
9. So ordered.




(D.P. Singh)

Joint Secretary (Revision Application)

Dr. Purnima Thakran
C/o Ashok Venilal Suratwala,
502, Surad Appartment,
106/13, Earand Wane,
Off Ketkar Road,
Opp. Shamrao Kalmadi School,
Pune – 411 004.

BPS

Attestd'



(Signature of Attestd' Sharma)
Attestd' (Revision Application)
Ministry of Revenue (T. & E. D.)
Pune - 411 004

Order No. _____ /14-Cus Dated _____ .2014

Copy to:

1. The Commissioner of Customs, Chhatrapati Shivaji International Airport, Avas Corporate Point, Makhwana Lane, Andheri Kurla Road, Andheri (East), Mumbai – 400 059.
2. Commissioner of Customs (Appeals), Mumbai-III, Avas Corporate Point, Makhwana Lane, Andheri Kurla Road, Andheri (East), Mumbai – 400 059.
3. Joint Commissioner of Customs, Chhatrapati Shivaji International Airport, Mumbai – 400 099
- ~~4. PA to JS(RA)~~
5. Guard File.
6. Spare Copy



(B.P. Sharma)
OSD(Revision Application)