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F.Nos. 371/106/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... 30/4/14

ORDER NO. _____ 110/14-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. GOA-EXCUS-000-APP-003-13-14 dated 11.09.2013 passed by Commissioner of Customs, Central Excise and Service Tax (Appeals), Panaji Goa

APPLICANT : Mr. Noor Mohiddin Bapa, 16, Aboo House, Khalifa Street, Bhatkal, Karnataka – 581 320

RESPONDENT : Commissioner of Customs, Pune

ORDER

This revision application is filed by Mr. Noor Mohiddin Bapa against the order-in-appeal No. GOA-EXCUS-000-APP-003-13-14 dated 11.09.2013 passed by Commissioner of Customs, Central Excise and Service Tax (Appeals), Panaji Goa with respect to order-in-original No.04/12-13 dated 28.02.2013 passed by Additional Commissioner of Customs, Pune.

2. Brief facts of the case are that on 28.11.2011, a passenger named Shri Noor Mohiddin Bapa holding an Indian Passport No. Z1207598 arrived at Pune from Dubai by Air India Express flight No. IX 212. The passenger was intercepted on suspicion by the Customs Officers at Pune International Airport. During the course of personal search, total 5 packets wrapped in brown / white tape were found concealed in leg bands, wrapped around his upper arms i.e. three packets concealed around his right upper arm (Biceps) and two around his upper left arm. The officers then opened the said packets and observed that various gold jewellery was concealed in the said packets. The said gold weighing 1.680 kgs valued at Rs.35,28,000/- as detailed in Panchanama dated 28.11.2011, was seized under the reasonable belief that the same were attempted to be imported by concealment and mis-declaration in violation of the provisions of the Customs Act 1962 and thereby liable for confiscation. Further, on personal search of Shri Noor Mohiddin Bapa, it has been observed that the Indian currency of Rs.12,500/- was available with him and as the said currency was more than the permitted amount of Rs.7500/-, the same was also seized under Panchanam dated 28.11.2011.

2.1 The statement of Shri Noor Mohiddin Bapa was recorded on 28.11.2011 under Section 108 of the Customs Act, 1962 wherein he interalia stated that he arrived from Dubai to Pune by air India Express Flight No. IX 212 on 28.11.2011. He also admitted that on his personal search, the officers of the Customs recovered from his possession, 5 packets containing 1680 grams of gold jewellery concealed on his body. He further

interalia stated that the gold seized from his possession belongs to him and it was purchased for 2,35,000 Dinar from Shri Sampat residing in Dubai, that he have used 2,00,000 Dinar of his company and owned 35,000 dinar for purchase of the said gold jewellery that the gold jewellery were to be sold to a person at Mumbai whose contact no. was to be given by Shri Sampat after reaching Pune. He further stated that after delivery of gold, he was to get Rs.80,000/- in Indian currency and 2,35,000 in dinar. On being asked he stated that the flight ticket was booked by him, that he is into Garment business and he had travelled to Hongkong, China and places in India for business purposes. On being asked the reason to travel to Hongkong he stated that as he intended to visit to China he travelled to Hongkong and then China. He also stated that he has travelled to China for garment business. However, on being asked about the knowledge of garment he stated that he does not have any knowledge about garments.

2.2 Another statement of Shri Noor Mohiddin was recorded on 05.12.2011 under Section 108 of the Customs Act, 1962 wherein he interalia stated that he is having credit cards issued by SBI & Urban Bank, Bhatkal, NRI account with SBI, Bhatkal Branch, that he has not filed IT returns for the last two years. He also stated that his source of income is purchasing various garments from Mumbai and sell the same in Saudi Arabia, that he is purchasing garments only from a factory located at Kurla Mumbai. He admitted to produce the copies of bills of purchases of garment from Mumbai. However, till date he has neither produced any bill nor any bank statement.

2.3 Panchanama was drawn on 01.12.2011 to ascertain the genuineness and value of the seized gold jewellery as detailed in the Panchanama dt. 28.11.2011. Shri Anil Ranka, Government approved Valuer bearing Registration No. CAT/VIII/465/1997 issued by Income Tax Department submitted his valuation report of the above mentioned seized gold jewellery vide Panchaname dated 28.11.2011. During the course of valuation of gold jewellery seized from Shri Noor Mohiddin Bapa, every item of jewellery seized from his possession was considered. As per the said valuation, the gold jewellery weighing 1857.55 grams was valued at Rs.48,81,641/-.

2.4 Therefore, Shri Noor Mohiddin Bapa was issued show cause notice as to why :-

2.4.1 The gold jewellery totally weighing 1.857 grams and valued at Rs.48,81,641/- as detailed in panchnama dated 01/12/2011, should not be confiscated under Section 111(d), (l) and (m) of the Customs Act, 1962.

2.4.2 The Indian Currency of Rs.12,500/- should not be confiscated under the provisions of Customs Act, 1962 alongwith FEMA, 1999.

2.4.3 The packing material used for packing the smuggled gold jewellery should not be confiscated under section 118(a) of the Customs Act, 1962.

2.4.4 Penalty should not be imposed on him under section 112(a) and (b) of the Customs Act, 1962.

2.4.5 Penalty should not be imposed under section 114AA of the Customs Act, 1962 on Shri Noor Mohiddin Bapa for intentionally making a false and incorrect declaration on the Customs Gate Pass to evade Customs duty.

2.5 After following the due process of law, the Additional Commissioner of Customs Pune, vide order-in-original dated 28.02.2013 ordered absolute confiscation of gold jewellery and Indian Currency alongwith packing material under section 111(d) (l) & (m) / 118(a) read with FEMA provision and imposed penalty of Rs.9,00,000/- and Rs.3,50,000/- under section 114 (AA) and 112(a) respectively.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who modified the impugned order-in-original and allowed the said gold and Indian currency to be redeemed on payment of redemption fine of Rs.48.00 lakhs and Rs.5000/- respectively. The penalty imposed by original authority was upheld.

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

4.1 That the impugned order is devoid of reasons. It is settled position in law that 'Reasons' constitute heart-beat of every order, hence if there is no reason, there is no life in order. Looked at from that background, the impugned order denying reliefs similar to those granted to Nihar Sameer Mehta is unreasonable and unjustified.

4.2 That without prejudice, the redemption fine and penalties imposed in the instant case are too high, very harsh, discriminatory & disproportionate and deserves to be reduced substantially.

4.3 That the Commissioner (Appeals) erred in failing to consider the plea of harsh penalty and to give findings thereon.

4.4 That the Commissioner (Appeals) also erred in failing to give any findings on the defence of the applicant, as contained in the preliminary reply dated 07.02.2013 and the appeal, and in upholding the penalties imposed by the lower authority on the applicant.

4.5 In the preliminary reply dated 07.02.2013 to the show cause notice, the applicant denied the allegations leveled against him in the SCN. It was also submitted therein that –

(i) Import of gold jewellery is permitted 'freely' under the Foreign Trade Policy. For ready reference a copy of the ITC (HS) details for Code 7113 available on DGFT website is enclosed.

(ii) The applicant was intercepted before he could proceed to Red Channel. In the Pnchanama dated 28.11.2011 Panchas were informed that the officers had reasonable belief that the applicant has concealed gold jewellery on his person. The Panchanama nowhere alleges that the applicant had crossed green channel without declaring gold jewellery.

(iii) The gate pass containing declaration showing value of dutiable goods as 'Nil' was subsequently obtained forcibly by the officer and was therefore not recorded in the Panchanama.

(iv) The applicant's statement dated 28.11.2011 was scribed in Hindi by an officer without informing the contents thereof to the applicant whose signature was forcibly obtained on the same.

(v) Without prejudice to the submission that the applicant was intercepted while he was proceeding to Red Channel, it is submitted that even otherwise goods not being notified as 'prohibited', and are importable 'freely' are not absolutely confiscable and the applicant was entitled for conditional release thereof.

4.6 That the impugned order is also bereft of any findings to sustain the denial of cross-examination of witnesses in light of Section 138B of the Customs Act, 1962.

4.7 That the Hon'ble Revisionary Authority will appreciate that INR 7500/- ought to have been released without any fine as the same was within permissible limit and is not be liable to confiscation.

4.8 That the Commissioner (Appeals) erred in failing to allow redemption of confiscated gold jewellery and Indian currency on the same yardstick as adopted by the department in an identical case of Shri Nihar Sameer Mehta, thereby violating Article 14 of the Constitution of India. This Hon'ble Revisionary Authority will appreciate that the said order in the case of Shri Nihar Sameer Mehta was accepted by the department and has not been challenged in any higher forum.

4.9 In view of the above, the applicant respectfully prays –

(i) For setting aside / modification of the impugned order-in-appeal to the extent it confirms the order-in-original dated 31.01.13 and also imposes very harsh and heavy fine and penalties.

5. Personal hearing scheduled in this case on 10.04.14 at Mumbai was attended by Shri Yogesh Rohira, Advocate 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 said gold jewellery imported by the applicant passenger was in commercial quantity. It was not declared by the applicant before customs as required under section 77 of Customs Act, 1962 and the jewellery was recovered during search of baggage and person. The applicant in his statement admitted the recovery of said gold and further stated that said gold belongs to him and it was purchased at Dubai. Import of gold jewellery in commercial quantity by the applicant through baggage mode that too undeclared does not constitute bonafide baggage in terms of section 79 of Customs Act, 1962 and violates the provisions of Baggage Rules, 1998, section 77,79,11 of Customs Act, 1962, para 2.20 of FTP 2009-20014 and also the provision of section 11 (1) of Foreign Trade (Development and Regulation) Act, 1992. The adjudicating authority after following due process of law, absolutely confiscated the said goods under section 111 (d) (l) & (m) of Customs Act, 1962. A penalty of Rs. 9,00,000/- and 3,50,000/- was imposed on the said applicant passenger under section 114 AA & 112(a) of Customs Act, 1962 respectively. In appeal, Commissioner (Appeals) allowed the redemption of goods on payment of redemption fine of Rs.48.00 lakhs and upheld the penalties. Now in this revision application the applicant has challenged the said Order-in-Appeal and pleaded to set aside the exorbitant fine and penalties imposed by lower authorities and pleaded to release the said jewellery on payment of reasonable reduced redemption fine and penalty.

8. Government notes that it is a clear cut case of mis-declaration of said gold jewellery. The jewellery was found concealed in his socks, but it was not concealed in any ingenious matter. Applicant has stated in his statement recorded under section 108

of Customs Act that said gold jewellery belongs to him. In such a situation, the confiscation of goods is rightly ordered under section 111 (d) (l) (m) of Customs Act. So, the order for confiscation of goods and imposition of penalty cannot be assailed.

9. Applicant has pleaded that redemption fine and penalty imposed is very harsh and requested to reduce the same to the reasonable extent. Government notes that value of gold jewellery is Rs.48,81,641/- and it has to be cleared on payment of appropriate Customs duty of around 36%. The redemption is imposed to wipe out the profit margin of the importer. Keeping in view the duty incidence, the profit margin will not be substantial. Applicant is the owner of said gold and he has not concealed it in an ingenious manner. Government, therefore, keeping in view the overall circumstances of the case finds that redemption fine and penalty imposed in this case is quite excessive /harsh and can be reduced to meet the ends of justice. As such, Government reduces the redemption fine to Rs.9.50 lakhs (Rupees nine lakhs and fifty thousand only), personal penalty under section 114 AA to Rs.1.00 lakhs (Rupees one lakh) and personal penalty under section 112(a) to Rs.4.00 lakhs (Rupees four lakhs). The impugned order-in-appeal is modified to this extent.

10. The revision application is therefore allowed in above terms.

11. So, ordered.

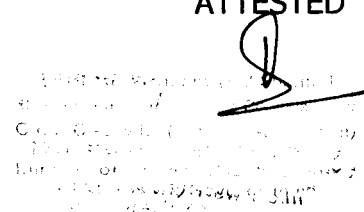


(D.P. Singh)

Joint Secretary to the Govt. of India

Mr. Noor Mohiddin Bapa,
16, Aboo House, Khalifa Street,
Bhatkal, Karnataka – 581 320

ATTESTED



Joint Secretary to the Govt. of India
Ministry of Revenue
New Delhi

Order No. 110/14-Cx dated 30-04-2014

Copy to:

1. The Commissioner of Customs, 41-A, ICE House, 'D' Wing, 4th Floor, Sasoon Road, Pune – 411 001.
2. The Commissioner of Customs, (Appeals), Central Excise & Customs, ICE House, EDC Complex, Patta Panaji (Goa).
3. Additional Commissioner of Customs, Pune, 41-A, ICE House, Sasoon Road, Pune – 411 001.
4. PS to JS(RA)
5. Guard File
6. Spare Copy

ATTESTED



(B.P.Sharma)

OSD (REVISION APPLICATION)