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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. 371/28-29/B/17-RA / 5604

Date of Issue 21.09.2020

ORDER NO. ¹²³¹²⁴ /2020-CUS (WZ)/ASRA/MUMBAI DATED 07.08.2020 OF THE
GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Rajeshi Bhimji Panchal

Respondent : Commissioner of Customs, Ahmedabad.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal AHM-CUSTOM-
000-APP- 76-77-17-18 dated 06.07.2017 passed by the
Commissioner of Customs (Appeals), Ahmedabad.



ORDER

This revision application has been filed by Rajesh Bhimji Panchal (herein after referred to as the Applicant) against the order in appeal Order-in-Appeal AHM-CUSTOM-000-APP-76-77-17-18 dated 06.07.2017 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. Briefly stated the facts of the case are that the Applicant, arrived at the SVP International Airport on 08.08.2015. He was intercepted by the officers on duty and on being asked to pass through the Door Frame Metal Detector. The removal of his socks revealed two gold pieces totally weighing 378.450 grams valued at Rs. 8,62,033/- (Rupees Eight lacs Sixty Two thousand and thirty three).

3. The Original Adjudicating Authority vide Order-In-Original No. 43/JC-BP/SVPIA/O&A/2016 dated 05.09.2016 ordered confiscation of the impugned gold under Section 111 (d) (i) (m) and (o) of the Customs Act, 1962, but allowed redemption of the same on payment of redemption fine of Rs. 6,31,577/- (Rupees six lacs Thirty one thousand Five hundred and Seventy seven) and imposed penalty of Rs. 31,067/- (Rupees Thirty one thousand and Sixty seven) under Section 112 (a) of the Customs Act. A penalty of Rs. Rs. 8,62,033/- (Rupees Eight lacs Sixty Two thousand and thirty three) was also imposed under Section 114AA of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant as well as the department both filed appeals before the Commissioner (Appeals). The Commissioner (Appeals) vide Order-In-Appeal No. AHM-CUSTOM-000-APP-76-77-17-18 dated 06.07.2017 set aside the redemption of the gold and rejected the rest of the appeal of the applicant.

5. Aggrieved with the above order the Applicant, has filed this revision application alongwith an application for condoning the delay of 15 days interalia on the following grounds.

5.1 A panchanama is just a statement of witnesses and cannot take place of a seizure memo under section 110 of the Act; hence even confiscation of the gold is not sustainable leave aside absolute confiscation; Under section 125 of the Customs Act, 1962 The goods which are not prohibited, there is no discretion but to release the goods on redemption. For goods which are prohibited discretion is given to the Adjudicating authority.; In general discretion must be exercised only by the authority to which it is committed.; Even if it is presumed without accepting that there is a case for confiscation, since there is no



ingenious concealment the goods are liable to be released on redemption; The quantum of redemption fine and the penalties imposed have been discussed in various cases wherein the direction is to wipe out the * Margin of profit* and would be within the range of 10% to 20%; The Applicant is not a carrier and there are no previous records of any violations of Customs rules earlier.; The difference between the UAE market value of the gold and Indian values is only Ra. 65,760/-.The penalty under section 114AA was introduced primarily to cover the cases of bogus and fraudulent exports without documents, where goods were not available for seizure /confiscation.

5.2 The Applicant relied upon various judgements in support of his case and prayed for release of the gold on payment of customs duties and dropped and the redemption fine may be reduced to a reasonable level.

6. A personal hearing in the case was held in the case on 05.12.2019, the Advocate for the Applicant Shri Rashikesh J. Mehra, attended the hearing, he re-iterated that the gold under import kept concealed as the Applicant had to travel on the highway. There was no ingenious concealment. The penalties and fines imposed are harsh and pleaded for setting aside the absolute confiscation.

7. The facts of the case reveal that the Applicant had not properly declared as required under section 77 of the Customs Act,1962 the confiscation of the gold is upheld.

8. However, import of gold is restricted not prohibited. The gold recovered was carried by the Applicant in his socks and though concealed terming this as ingenious concealment will be an exaggeration. The quantity of gold is not very large. The Applicant is not a carrier and does not have any previous offences registered against him. The Hon'ble Supreme Court has in the case of Om Prakash vs Union of India stated that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions. In the case Hargovind Das K. Joshi v/s Collector of Customs reported in 1992 (61) E.L.T. 172 (S.C.),The Apex Court has pronounced that a quasi judicial authority must exercise discretionary powers in judicial and not arbitrary manner and remanded the case back for consideration under section 125(1) of the Customs Act, 1962. Government therefore holds that dispossessing the Applicant of the gold for non-declaration appears to be very harsh and unjustified. Government also notes that the redemption fine of Rs. 6,31,577/- alongwith penalty and customs duty of 36% on gold valued at Ra. 1,75,033/- are heavy. The Government therefore observes that the release of the



impugned gold on imposition of appropriate redemption fine and penalty would meet the ends of justice. The impugned Order in Appeal is therefore required to be set aside.

9. Accordingly, the absolute confiscation of the gold is set aside. The impugned gold valued at Rs. 8,62,033/- (Rupees Eight lacs Sixty Two thousand and thirty three) is allowed to be redeemed on payment of a redemption fine of Rs. 2,15,000/- (Rupees Two lacs fifteen thousand). The penalty imposed under section 112 (a) is appropriate. Government however observes that once penalty has been imposed under section 112(a) there is no necessity of imposing penalty under section 114AA. The penalty of Rs. 8,62,033/- (Rupees Eight lacs Sixty Two thousand and thirty three) imposed under section 114AA of the Customs Act, 1962 is set aside.

10. Revision application is allowed on above terms.

11. So ordered.

(SEEMA ARORA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

123-124
ORDER No. /2020-CUS (WZ) /ASRA/

07/08/20
DATED 07/08/2020

To,
Shri Rajesh Bhimji Panchal S/o Shri Bhimji Panchal, Village Pindawal, Aaspur,
Dungarpur, Rajasthan.

Copy To,

1. The Commissioner of Customs, "Customs House" Navrangpura, Ahmedabad 380 009.
2. Shri Rishikesh J. Mehra, C/11, Rathi Apts., Opp Power House Colony, Dharamnagar, Sabarmati, Ahmedabad.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy:

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

