



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 371/56/B/2017-RA / 5414

Date of Issue 15.09.2020

ORDER NO. 26/2020 CUS (WZ)/ASRA/MUMBAI DATED 07.08.2020 OF
THE GOVERNMENT OF INDIA PASSED BY SHRI SEEMA ARORA, PRINCIPAL
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT,
1962.

Applicant : Shri Hemant Kumar

Respondent : Commissioner of Customs, Ahmedabad

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. AHD-
CUSTM-000--APP-080-081-17-18 dated 06.07.2017 passed
by the Commissioner of Customs (Appeals), Ahmedabad.



ORDER

This revision application has been filed by Shri Hemant Kumar (herein after referred to as the Applicant) against the Order in appeal No. AHD-CUSTOM-000—APP- 080-081-17-18 dated 06.07.2017 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. Briefly stated the facts of the case is that the applicant arrived at the SVPI Airport on 03.08.2015. On suspicion the Applicant and his baggage was subjected to a metal detector scan, One gold bar and five tiny pieces of gold were recovered from his trouser pocket collectively weighing 199.13 grams, valued at Rs.4,52,231/- (Rupees Four lacs Fifty two Thousand Two hundred and Thirty one). A Sony play station, , one Lenovo laptop and an Apple I-Phone was also recovered for his possession totally valued at Rs. 59,037/- (Rupees Fifty nine thousand and thirty seven)was also recovered from the Applicant.

3. The Original Adjudicating Authority vide Order-In-Original No. 36/JC-BP/SVPIA/O&A/2016 dated 26.08.2016 ordered confiscation of the impugned gold under Section 111 (d) (l) and (m) of the Customs Act,1962, but allowed redemption of the same on redemption fine of Rs. 3,43,945/- (Rupees Three lacs Forty three Thousand Nine hundred and Forty five) and imposed penalty of Rs. 16,303/- (Rupees Sixteen thousand three hundred and three) under Section 112 (a) of the Customs Act. A penalty of Rs. 4,52,231/- (Rupees Four lacs Fifty two Thousand Two hundred and Thirty one)was also imposed under Section 114AA of the Customs Act 1962. The seizure of the electronic items valued at Rs. 59,037/- (Rupees Fifty nine thousand and thirty seven) was vacated.

4. Aggrieved by the said order, the Applicant as well as the Department filed appeals before the Commissioner (Appeals) who vide Order-In-Appeal No. AHD-CUSTOM-000—APP- 080-081-17-18 dated 06.07.2017 rejected the Applicants Appeal on the grounds of limitation as the application was received late by one and allowed the Departments appeal by disallowing redemption and



ordered absolute confiscation of the gold and modified the order of the lower adjudicating authority, without altering the penalties imposed.

5. Aggrieved with the above order the Applicant, has filed this revision application interalia on the grounds that;

5.1 The Appeal before the Commissioner (Appeals) was filed six days prior to the last day of filing the Appeal (copy enclosed). Further the delay of one day was within the condonable period therefore the rejection on these grounds is unjustified; The Applicant was not informed about the delay in receipt of the Appeal and therefore could not file the "Application for condonation of delay", the delay in receipt was also not informed at the time of hearing before the Commissioner(Appeals); The delay in delivering the Appeal was made by the postal department;

5.2 Penalty under section 114AA not imposable as the Applicant did not claim of receive export incentive by submitting any false document with DGFT or Customs.

5.3 Order of absolute confiscation and upholding penalty under section 114AA is not sustainable in the absence of any evidence on record.

5.4 The applicant neither opted for the green channel nor did he submit his disembarking form at the exit. The charge of non-declaration can be made only after the passenger opts for the green channel or walks through the green channel.

5.5 The gold was recovered from the trouser pockets of the Applicant and it cannot amount to concealment.

5.6 The Appellate authority while holding the goods liable for absolute confiscation has not held the goods as prohibited goods.

5.7 The amount of redemption fine is very high and amounts to 76% of the value of the gold, whereas the same is to be imposed to neutralize the profit margin.

5.8 The Applicant cited case laws in favour of his case and prayed for setting aside the Appellate order on grounds of limitation and release of the gold for redemption on suitable and reasonable fine



based on profit margin or any other order as deemed fit in the facts and circumstances of the case.

6. A personal hearing in the case was scheduled in the case on 05.12.2019. Advocate for the Applicant Shri Rishikesh J Meher Advocate appeared for the hearing. He pleaded that there was no ingenious concealment and there was no concession given prayed that the absolute confiscation of the gold may be set aside.

FINDINGS AND ORDER

7. The Government has gone through the facts of the case. The Applicant has mainly challenged the Appellate order in respect of limitation for the postal delay of one day inspite of the fact that the delay was within condonable limits. The Applicant also submits that the fact of the delay was not communicated to him and therefore he was not in a position to file the application for condonation of delay. This fact was also not communicated to him at the time of hearing. Government notes that there was sufficient cause in this case for condoning such delay and the Commissioner (Appeals) ought to have condoned the delay. The Applicant contends that he had a strong case on merits and, therefore, the lower appellate authority's action had resulted in miscarriage of justice. The Hon'ble Supreme Court in the case of Collector Land acquisition Anant nag & others vs. Mst. Katiji and others(1987 (28) ELT 185 SC has held that when a delay is within condonable limits laid down by the statute, the discretion vested in the authority to condone such delay is to be exercised following principles laid down in the judgement. Government therefore condones the delay of one day which is condonable limits and proceeds to decide the case on merits.

8. The facts of the case state that the gold totally weighing 199.13 grams, valued at Rs. 4,52,231/- (Rupees Four lacs Fifty two Thousand Two hundred and Thirty one) was recovered from the Applicants trouser pocket, it was not concealed ingeniously. Further the seizure was initiated before the Applicant could file a declaration or opt for the green or red channels. The ownership of the gold is not under dispute, and the Applicant is not a known carrier. Under the circumstances absolute confiscation in this case is an order in excess and cannot



be justified. The Applicant has pleaded for redemption of the gold on payment of redemption fine and penalty and the Government, keeping in mind the facts of the case, is inclined to accept the plea. The impugned Order in Appeal is therefore required to be set aside.

9. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 199.13 grams, valued at Rs. 4,52,231/- (Rupees Four lacs Fifty two Thousand Two hundred and Thirty one) is allowed to be redeemed on payment of redemption fine of Rs. 1,13,000/- (Rupees One lac thirteen thousand) under section 125 of the Customs Act, 1962. The penalty imposed under section 112(a) is appropriate. Government observes that once penalty is imposed under section 112(a) of the Customs Act,1962 there is no necessity of imposing penalty under section 114AA. The penalty of Rs. 4,52,231/- (Rupees Four lacs Fifty two Thousand Two hundred and Thirty one) imposed under section 114AA of the Customs Act,1962 is set aside.

10. Revision application is allowed on above terms.

(SEEMA ARORA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 126/2020-CUS (WZ) /ASRA/

DATED 07.08.2020

To,

1. Shri Hemant Kumar, Plot No. 10 Ganapati Nagar, Ajay Nagar, Ajmer-305 001.

Copy to:

1. The Commissioner of Customs, SVPI Airport, Ahmedabad.
2. Shri Rishikesh J. Mehra, Advocate, C/11 Rathi Apartments , Opp. Power House Colony, Dharamnagar, Sabarmati, Ahmedabad - 380 005.

2 Sr. P.S. to AS (RA), Mumbai.

3 Guard File.

4 Spare Copy.

ATTESTED

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

