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SPEED POST

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

F. No. 380/104/B/14-RA / 4671 Date of Issue 23/10/19

ORDER NO. 14/2019-CUS (WZ) / ASRA / MUMBAI DATED
30.09.2019 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 : The Commissioner of Customs, Sardar Vallabhbhai Patel
International Airport, Ahmedabad.

Respondent : Smt Raashi Khemchandani.
Shri Akhil Singhal.
Smt. Meenal Gopal Goyal.

Subject : Revision Application filed, under Section 129DD
of the Customs Act, 1962 against the Order- in-
Appeal No. 1) AHM-CUSTM-000-APP-243-14-15 dated
19.08.2014 2) AHM-CUSTM-000-APP244--14-15 3)
AHM-CUSTM-000-APP-245-14-15 dated
19.08.2014 dated 19.08.2014 passed by the
Commissioner of Customs (Appeals), Ahmdedabad.

ORDER

This revision application has been filed by the Assistant Commissioner of Customs, Sardar Vallabhbhai Patel International Airport, Ahmedabad (herein referred to as Applicant) against the Order in Appeal No. AHD-CUSTM-000-APP-243 to 245-14-15 dated 19.08.2014 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. Smt. Raashi Khemchandani, Shri Akhil Singhal and Smt. Meenal Gopal Goyal are Non-Resident Indians based on Dubai arrived at SVPI Airport, Ahmedabad vide different flights on different dates. These three passengers were intercepted by the Customs Officers and found that they had Gold Jewellery worth Rs. 4,80,879/-, Rs. 12,82,516/- and Rs. 11,22,068/- respectively which was not declared by them in declaration form. As per the provisions of Section 77 of Customs Act, 1962 read with the Rule 6 of the baggage rules 1998 and regulation 3 of Customs Baggage Declaration 2013 maximum value at Rs. 1,00,000/- was allowed duty free in respect of lady passenger and Rs. 50,000/- was allowed in respect of male passenger. The Customs officers seized the impugned gold jewellery under the reasonable belief that the same were smuggled into India and hence liable to confiscation under the provisions of the Customs Act, 1962.

3. After due process of law, the Original Adjudicating Authority ordered confiscation of the gold jewellery and gave option to redeem the goods on payment of redemption fine, penalty and duty at the appropriate rate. The details are as under :-

Name of the passenger	OIO No. / Date	Value of confiscated jewellery (Rs.)	Redemption fine imposed (Rs.)	Penalty Imposed (Rs.)
Smt. Raashi Khemchandani	Spot Adjudication dt. 28.03.2014	4,80,879/-	1,20,219/-	1,73,357/-
Shri Akhil Singhal	11/2014 dt. 04.04.2014	12,82,516/-	4,00,000/-	4,00,000/-
Smt. Meenal Gopal Goyal	13/2014 dt. 04.04.2014	11,22,068/-	3,00,000/-	3,00,000/-

4. Aggrieved by the said order, the respondents filed appeal before the Commissioner (Appeals), Ahmedabad. All the said appeals were decided by the Commissioner (Appeals), Ahmedabad vide Order in Appeal Nos. 1) AHM-CUSTM-000-APP-243 to 245-14-15 dated 19.08.2014 2) AHM-CUSTM-000-APP-244-14-15 dated 19.08.2014 3) AHM-CUSTM-000-APP-245-14-15 dated 19.08.2014 modified the order in originals to the extent that :

i) Smt. Raashi Khemchandani was allowed to re-export the impugned goods and recovery of duty was set aside on payment of redemption fine of Rs. 50,000/- and the penalty imposed was also set aside.

ii) Shri Akhil Singhal was allowed to re-export the impugned goods and recovery of duty was set aside on payment of redemption fine of Rs. 1,30,000/- and the penalty imposed was also set aside.

iii) Smt. Meenal Gopal Goyal was allowed to re-export the impugned goods and recovery of duty was set aside on payment of redemption fine of Rs. 1,10,000/- and the penalty imposed was also set aside.

5. Aggrieved with the above order the Department has filed this revision application on the grounds that

5.1 the respondent, while carrying the impugned gold, had deliberately and knowingly opted for green channel.

5.2 the respondent opted for the green channel without declaring the gold jewellery , the burden of proving that the subject goods were not smuggled lies squarely on the shoulders of the respective passengers.

5.3 once the goods are held liable for confiscation under Section 111 of the Act, all passengers become liable for penalty under Section 112 of the Act.

5.4 the option to re-export the goods is not available in the present case as the re-export is allowed if and only if the passenger had declared the goods in the Indian Customs Declaration Form prescribed under Regulation 3 of the Customs Baggage Declaration Regulations, 2013. \

6. The Department requested to set aside the impugned order in appeal and uphold the order in original.

7. A show cause notice under Section 129DD of the Customs Act, 1962 was issued to the respondent with request to show cause within 15 days as to why said order in original should not be annulled or any other order as deemed fit be

passed by the Government on the grounds stipulated in the said revision application. No reply was received in this regard from the respondent.


8. A personal hearing in the case was held on 30.08.2019 & 06.09.2019. Shri Kunal Kanungo, Advocate attended the hearing on behalf of respondents. The applicant did not appear for personal hearing.

9. The Government has gone through the facts of the case. The impugned gold jewellery was all in non-commercial quantities and under the circumstances confiscation of the goods is not justified. The gold jewellery items were worn by the respondents and were not ingeniously concealed. Further, the ownership of gold is not disputed. The Department could not produce sufficient cause / evidence to infer that the respondents are acting as carriers of gold, either on their own or on behalf of some other person / racket for monetary consideration. The department did not produce details of any other cases filed against respondents in which they were involved in any offences and it was a hardcore attempt on their part to smuggle the goods into India Hence, the department could not prove the Mens rea in the instant case and mere non-submission of the declaration cannot be held against the respondents and dispossesses them of the gold jewellery. In view of the above facts, the Government is of the opinion that the Appellate Authority has rightly set aside the order of original and allowed the respondent the re-export of the gold on payment of redemption fine.

10. The Government finds no reason to interfere with the Order in Appeal. The Appellate orders 1) AHM-CUSTOM-000-APP-243-14-15 dated 19.08.2014 2) AHM-CUSTOM-000-APP-244-14-15 dated 19.08.2014 and 3) AHM-CUSTOM-000-APP-245-14-15 dated 19.08.2014 passed by the Commissioner of Customs (Appeals), Ahmedabad are upheld as legal and proper.

11. Revision Application is dismissed.

12. So ordered.


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

ORDER No. 14/2019-CUS (WZ) /ASRA/

DATED 30-09-2019

To,

1. The Commissioner of Customs, Ahmedabad,
Custom House, Near All India Radio,
Navrangpura, Ahmedabad- 380 009.
2. Smt. Raashi Khemchandani.
Shri Akhil Singhal.
Smt. Meenal Gopal Goyal.
C/o Power of Attorney Holder Shri Govind Goyal,
D/5, Takshashila Colony, Raman Nagar,
Maninagar, Ahmedabad – 380 008.

Copy to:

1. The Commissioner of Customs (Appeals), Ahmedabad.
2. Sr. P.S. to AS (RA), Mumbai.
- ~~3. Guard File.~~
4. Spare Copy.