

REGISTERED  
SPEED POST

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

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 F.No. 371/59/B/2017-RA(Mum) / 3366

 Date of Issue 14.09.2020
 

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ORDER NO. 140/2020-CUS (WZ)/ASRA/MUMBAI DATED 13.08.2020 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.

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Applicant : Shri Deepak Laxmilal Soni

Respondent : Commissioner of Customs, Ahmedabad.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. AHD-CUSTOM-000-APP-145-15-16 dated 06.10.2015 passed by the Commissioner of Customs (Appeals), Ahmedabad.



ORDER

This revision application has been filed by Shri Deepak Laxmilal Soni (herein after referred to as the Applicant) against the Order in appeal No. AHD-CUSTOM-000-APP-145-15-16 dated 06.10.2015 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 07.02.2014. On noticing the short visit the Customs officer directed him towards the red channel. On being made to pass through the X-ray machine which indicated metal concealment in his shoes. Examination of his shoes resulted in the recovery of 2 gold bars totally weighing 1264.32 gms valued at Rs. 32,15,393/- ( Rupees Thirty two lacs Fifteen Thousand three hundred and Ninety three),

3. The Original Adjudicating Authority vide Order-In-Original No. 25/ADC/MRM/SVPIA/O&A/2015 dated 16.02.2015 ordered absolute confiscation of the impugned goods under Section 111 (d) (l) and (m) of the Customs Act,1962 and imposed penalty of Rs. 2,50,000/- ( Rupees Two Lacs Fifty thousand ) under Section 112 (a) of the Customs Act. A penalty of Rs. 1,00,000/- ( Rupees One Lac ) was also imposed under Section 114AA of the Customs Act 1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. AHD-CUSTOM-000-APP-145-15-16 dated 06.10.2015 rejected the appeal of the applicant.

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

1. The Applicant produced the embarkation slip to the proper offer, though the gold is not mentioned in the embarkation slip.



2. Declaration required to be made under section 77 of the Customs Act, 1962 pertains to goods carried by the passenger in his baggage. Whereas the gold was carried by the Applicant in his shoes.

3. Except for the period of two and a half months during this visit, He has stayed abroad for long periods of a year earlier and therefore is an eligible person to import gold and also eligible for concessional rate of duty, and has been denied the benefit of Notification 12/2012. He is eligible to import 1kg of gold.

4. As the shoes were recovered from the shoes of the Applicant it cannot be considered as baggage and need not be declared.

5. The option available under section 125 of the Customs Act, 1962 was not extended to the Applicant. The adjudicating authority is well aware of the exclusion part in the definition of prohibited goods and therefore absolute confiscation is not sustainable.

6. The penalty imposed under section 114AA is incorrect.

6. A personal hearing in the case was scheduled in the case on 12.12.2019. Advocate for the Applicant Shri R.R.Dave consultant for the Applicant appeared for the hearing. He submitted written submissions reiterated his clients ownership of the gold and informed that the Applicant for eligible to import gold on concessional duty as he fulfils conditions. It was prayed that the gold be allowed re-export on redemption fine and reduced penalty.

#### FINDINGS AND ORDER

7. The Government has gone through the facts of the case. The quantity of impugned gold is 1264.32 gms, it is definitely in commercial quantities and cannot be termed as bonafide baggage goods. The Applicant did not declare the gold as required under section 77 of the Customs Act,1962 and it was discovered due to the timely intervention of the officer. The Applicant's has claimed to be an eligible passenger to import gold on the basis of his prolonged stay abroad before this trip. The Government however observes that the Applicant had denied carrying dutiable goods. Had he not been intercepted and made to pass through the X-ray machine before the exit, the Applicant would have taken out the gold without payment of customs duty. The concealment was



ingenious. The manner of concealment clearly indicates that there was no intention to declare the gold and therefore the said offence was premeditated and clearly indicates mensrea.

8. The above acts have therefore rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and the Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority. The Appellate order No. AHD-CUSTOM-000-APP-145-15-16 dated 09.04.2015 passed by the Commissioner of Customs (Appeals), Ahmedabad, is therefore upheld as legal and proper.

9. 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. 1,00,000/- ( Rupees One lac ) imposed under section 114AA of the Customs Act,1962 is set aside. The order of the Appellate Authority is accordingly modified to that extent.

10. Revision application is disposed of accordingly.

11. So, ordered.

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

ORDER No. H0/2020-CUS (WZ) /ASRA/

DATED 13.08.2020

To,

Deepak Laxmilal Soni, Village Post Decha Sagwara, Dungarpura, Rajasthan.

Copy to:

1. The Commissioner of Customs, SVPI Airport, Ahmedabad.
2. Shri R. R. Dave, Om Dharmajivan Apartment, Opposite Ghosha Society, Near Jai Ambe Nagar, Behind Udgam School, Thaltej, Ahmedabad 380 054.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File. ,
4. Spare Copy.

**ATTESTED**

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

