



GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,

Mumbai-400 005

F.No. 371/17/B/16-RA/5863

Date of Issue 30.09.2020

ORDER NO. 151/2020-CUS (WZ)/ASRA/MUMBAI DATED 31.08.2020 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 Abdul Hussain Saifuddin Hamid

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-252-15-16 dated 08.12.2015 passed by the Commissioner of Customs (Appeals), Ahmedabad.

ORDER

This revision application has been filed by Shri Abdul Hussain Saifuddin Hamid herein after referred to as the Applicant) against the Order in appeal No. AHD-CUSTOM-000-APP-252-15-16 dated 08.12.2015 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. On 26.01.2014 the Applicant arrived at the Ahmedabad Airport. He was intercepted as he was walking through the metal detector. Examination of his hand baggage resulted in the recovery of an aluminium coloured wire beneath a steel plate concealed below the cloth bottom. The examination of the checked in baggage also resulted in the recovery of an aluminium coloured wire beneath a steel plate concealed below the cloth bottom. The aluminium coloured wire totally weighed 1753.54 grams valued at Rs. 45,95,116/- (Rupees Forty five lakhs Ninety five thousand and One hundred and sixteen).

3. After due process of the law vide Order-In-Original No. 81/JC-AK/SVPIA/O&A/2014 dated 14.05.2015 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (i) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 8,50,000/- on the Applicant under Section 112 (a) of the Customs Act, 1962 on the Applicant. A penalty of Rs. 5,00,000/- 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-252-15-16 dated 08.12.2015 rejected the appeal of the Applicant.

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

5.1 The order of the appellate authority is illegal, improper and incorrect, both on facts and law, so far as the order of absolute confiscation and imposition of penalties. The weight of the aluminum coat of the gold wire has been included in the entire weight of the gold wire; The applicant does not have a single blemish in 25 years that he has stayed abroad, he was a victim of a conspiracy; The applicant is an eligible person to import gold; The Adjudicating authority should not have

imposed penalty higher than the duty sought to be evaded; Penalty imposed under section 114AA is imposable only in cases of false declaration in export of goods; The department has not produced any evidence to show that the gold wire was concealed with a dishonest intention by the applicant absolving him of mensrea; The applicant had informed the department that the ultimate beneficiaries were persons whose names and telephone numbers were provided but no investigations were done in this regard.; as the goods were not prohibited the Adjudicating authority was duty bound to offer redemption;

5.2 The Applicant submitted case laws in favor of his case and prayed for setting aside the absolute confiscation of the gold and release the gold for re-export or any other relief as deemed fit in the interest of justice.

6. A personal hearing in the case was scheduled in the case on 28.01 2020, the Advocate for the Applicant Shri S. S. Shastri, Advocate and the Revision Applicant attended the hearing, they re-iterated the submissions filed in Revision Application and pleaded that the impugned bags were not his and he was a victim of a smuggling activity, but was an eligible person to import gold. A written submission was made seeking re-export, reduction in penalty and setting aside the penalty imposed under section 114AA.


7. Government has gone through the facts of the case, it is observed that the gold brought by the Applicant was ingeniously concealed as wires in below a steel plate in the bottom of the hand and checked in baggage. The concealment was planned so as to avoid detection and evade Customs duty and smuggle the gold into India. A blatant attempt was made to smuggle the gold into India in contravention of the provisions of the Customs, 1962. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and that there was no intention of declaring the gold to the authorities and if he was not intercepted before the exit, the Applicant would have taken out the gold without payment of customs duty. The applicant on one hand claims that he is a victim of a smuggling racket and on the other hand pleaded for re-export. Having accepted that he is a victim of a smuggling racket he is not the owner of the impugned gold.

8. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed a penalty. The Government also holds that Commissioner (Appeals) has rightly upheld the absolute confiscation by the original adjudicating authority. Government however, notes that when penalty is imposed under section 112 no penalty is required to be imposed under section 114AA of the Customs Act,1962 for the same offence. The penalty imposed under section 114AA of the Customs Act,1962 therefore is required to be set aside.

9. The Government therefore finds no reason to interfere with the impugned Order-in-Appeal. The Appellate order is upheld as legal and proper. The penalty of Rs. 5,00,000/- (Rupees Five lakhs) imposed under section 114AA of the Customs Act,1962 is set aside.

10. Revision Application is partly allowed on the above terms.

11. So, ordered.


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

ORDER No. 151/2020-CUS (SZ) /ASRA/MUMBAI

DATED 31.08.2020

To,

Shri Abdul Hussain Saifuddin Hamid
 c/o Saifuddin Abde-Ali Hamid
 C-3, Jasmin Flats, Khanpur,
 Ahmedabad.

Copy to:

1. The Chief Commissioner of Customs, Gujarat Custom House, Ahmedabad.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.