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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

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F.No. 371/15/B/15-RA / 4514

Date of Issue 25/08/21

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ORDER NO 86/2021-CUS (WZ)/ASRA/MUMBAI DATED 17.08.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

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Applicant : Smt. Bhartiben Atulkumar Patel

Respondent : Commissioner of Customs, SVPIA, Ahmedabad

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. AHD-CUSTM-000-APP-377-14-15 dated 08.01.2015 passed by the Commissioner of Customs (Appeals), Ahmedabad.

ORDER

This revision application has been filed by Smt. Bhartiben Atulkumar Patel (herein referred to as Applicant) against the Order in Appeal No. AHD-CUSTM-000-APP-377-14-15 dated 08.01.2015 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. The Officers of Customs intercepted the Applicant on 16.06.2009 who had arrived from Doha after she had opted for the green channel, she had not declared any dutiable goods in her declaration. She was directed for screening and as the screening machine indicated metal in the bag, she was asked whether she was carrying any dutiable goods to which she informed that she was carrying gold jewelry. Examination of the hand baggage resulted in the recovery of 663.470 gms of gold jewelry and gold studded jewelry totally valued at Rs. 14,59,327/- (Rupees Fourteen lakhs Fifty nine thousand Three hundred and twenty seven).

3. After due process the original adjudicating authority vide order no. 16/Additional Commissioner/SVPIA/O&A/2010 dated 30.06.2010 ordered absolute confiscation of the jewelry ordered for recovery of customs duty amounting to Rs. 5,08,265/- (Rupees Five lakhs Eight thousand Two hundred and Sixty five). A penalty of Rs. 5,08,265/- (Rupees Five lakhs Eight thousand Two hundred and Sixty five) was also imposed under section 114A of the Customs Act, 1962.

4. Being aggrieved with the impugned order, the applicant filed appeal before the Commissioner (Appeals) who vide his order no. 275/2011/Cus/Commr. (A)/AHD dated 16.08.2011 set aside the absolute confiscation of the gold jewelry and allowed redemption on payment of Rs. 7,00,000/- ( Rupees Seven Lakhs) and allowed clearance on appropriate customs duty. The duty demand of Rs. 5,08,265/- (Rupees Five lakhs Eight thousand Two hundred and Sixty five) was rejected. The penalty of Rs. 5,08,265/- (Rupees Five lakhs Eight thousand Two hundred and Sixty five) was reduced to Rs. 1,50,000/- and was redetermined under section 112 (a) of the Customs Act, 1962.

5. Aggrieved with the order of the Appellate authority, the Applicant has filed this revision application before the then Revisional Authority who vide order no. 64/13-Cus dated 15.02.2013 reduced the redemption fine to Rs. 3,00,000/- ( Three Lakhs) and also reduced the penalty to Rs. 1,00,000/- ( Rupees one lakh).

6. The appellant pre-deposited Rs. 1,50,000/- and further paid Rs. 2,50,000/- and based on these payments, the appellant, vide letter dated 29-03-2013, requested to release the jewellery. But the jewelry was not released as Customs duty was not paid. As the jewellery was not released, the appellant filed Special Civil Application No. 13962 of 2013 in the High Court of Gujarat, Ahmedabad. The Hon'ble High Court, vide Order dated 20-11-2013, disposed of the appeal by directing the appellant to make payment of Rs. 5,08,625/- towards duty liability and furnish an undertaking before the appropriate authority / Commissioner of Customs, Ahmedabad regarding payment of warehousing charges and / or interest which may be liable to be paid after adjudication. The court also directed the department to release the seized goods once the petitioner makes payment of Rs. 5,08,625/- as per sub-section 2 of Section 125 of the Customs Act, 1962 and also directed to issue Show Cause Notice to the appellant with respect to warehousing charges and / or interest liability of duty, if any, within a period of four weeks.

7. A Show Cause Notice dated 17-12-2013 was accordingly issued to the applicant by the Assistant Commissioner of Customs, Sardar Vallabhbhai Patel International Airport, Ahmedabad from F. No. VIII/28-14/AP/Appeal/2010 and a Corrigendum to the said Show Cause Notice dated 05-02-2014 was issued, which was decided vide the order no. 03/AC/SVPIA/2014 dated 22.06.2014, wherein, the lower authority ordered the appellant to pay Rs.70,380/- towards godown charges and Rs. 4,27,663.00 towards interest on the said jewellery for the period from 16-06-2009 to 29-12-2013.

8. Aggrieved with the impugned Order, the appellant filed appeal, wherein, it inter alia, contended that, the impugned order is not proper and completely

unjustified and issued under serious misconception and wrong interpretation of the order passed by the Hon'ble Gujarat High Court and therefore, it is required to be quashed and set aside at this stage itself. The impugned order is non-speaking order and without furnishing any reasons which is nothing but complete violation of principle of natural justice and therefore is not tenable and required to be quashed. The Show Cause Notice was issued beyond the period prescribed in the order passed by Hon'ble High Court and hence the demand is not sustainable. The Assistant Commissioner has erred in issuing Show Cause Notice as well as passing the order on the basis that the Hon'ble Court directed to issue notice for demanding warehouse charges, interest and other fees.

9. The Appellate authority vide its order AHD-CUSTOM-000-APP-377-14-15 dated 08.01.2015 confirmed the demand of godown charges of Rs. 70,380.00 (Rupees Seventy Thousand Three Hundred Eighty Only) and interest of Rs.4,27,663/- (Rupees Four lakhs Twenty seven thousand Six hundred and sixty three) and rejected the appeal.

10. Aggrieved with the above order of the Appellate authority, the Applicant has filed this revision application on the following grounds.

A. That the impugned order passed by the First Appellate Authority is not proper and completely unjustified and issued under serious misconception and wrong interpretation of the order passed by the Hon'ble Gujarat High Court and therefore it is required to be quashed and set aside at this stage itself.

B. That the First Appellate Authority has completely brushed aside the ground raised by the Appellant with regard to the godown charges and straight away confirmed the demand, which is unjust and improper. The First Appellate Authority has held that the passenger was not willing to pay the duty and as she did not pay any duty, the said jewellery were not, released and it was kept in warehouse and therefore warehouse charge is required to be paid but he has just ignored the history of the case and straight away came to conclusion that the appellant is required to be paid warehousing charges, is wrong and unjustified. The facts of the case narrated above, the appellant have contested the liability of duty and interest as well as redemption fine and penalty upto the stage of the

Revision Authority and therefore till the adjudication gets over there cannot be held that the appellant were not lifting the goods but when the statutes itself provides the remedy to challenge the action of the Respondents, one cannot held responsible for the delay, in adjudication by the Respondents. It is an admitted fact that the appellant was served with the Show Cause Notice and thereafter adjudication was held. After completing entire process of adjudication, the appellant paid the dues as per the order but the Customs Authority but despite payment of the dues, the authorities did not released the goods and therefore there is no question of recovering any amount from the appellant on the pretext that it was due to appellant that charges are occurred.

C. That the First Appellate Authority has really not appreciated the fact that after the order passed by the Joint Secretary, Government of India, the Appellant paid redemption fine and penalty on 19.03.2013 and requested the authority vide his letter dated 29.03.2013 to release the goods but no response has been received from the respondent authorities. The Appellant once again sent reminders on 27.04.2013, 03.06.2013, 04.06.2013, 06.06.2013 & 08.06.2013 but all efforts were not attended by the deaf ears of the authorities and with no alternate the Appellant had to approach to the Hon'ble Gujarat High Court. It was the Hon'ble Court who interfered and despite which the authorities did not release the goods and appellant had to write to the Chief Commissioner. This entire chronology suggest the inaction and casual approach of the customs authorities and therefore wrongful detention of the goods with the warehouse, appellant should not be held responsible for charges and it is in clear violation of article 14 of the Constitution of India. Even the Hon'ble Supreme Court has held that Action of Customs is not beyond the pale of Article 14 of Constitution of India scrutiny merely because their functions are quasi-judicial in nature. It is trite law that postulates of Article 14, viz. non-arbitrariness, reasonableness and fairness in action flowing from Article 14 should guide and correct actions of Customs Department too. When the appellant was not at fault, any demand is unsustainable and unjustified and therefore the impugned order is not sustainable and required to be quashed and set aside.

D. That the First Appellate Authority has erred in not giving any findings on the submission that whether any charges for storage of this jewellery was paid or not and if paid then what amount because this charges are only subject to payment by the Customer Department to the third agency and if they have not paid any amount then customs authorities is not legally eligible to recover this amount from the assessee. However, in the present case, respondent has never provided details of actual payment of warehousing charges to the appellant and therefore in the absence of such an evidence no demand can be made against the appellants.

E. That the First Appellate Authority has erred in confirming Order In Original with regard to Interest under Section 28AA of the Customs Act, 1962 till the date of actual payment of duty under Section 125 (2) of the Customs Act, 1962 because Section 28AA of the said Act attracts only if there is delay in payment of duty which is liable to pay under Section 28 of the Customs Act, 1962 but when there is no provision to recover interest confirmation of such a thing is net permissible. Interest cannot be levied at the whims of the officers, there has to be a provisions and in the absence of such provisions any demand is not sustainable. The First Appellate Authority has ignored the law that Interest is compensatory and to ascertain the liability of interest, amount of duty necessary to ascertained and if there is no ascertained duty, there is no question of compensating the State by interest. The liability ascertained under Section 28 was already set aside by the Commissioner (Appeals) and therefore appellant was not liable to pay interest on any other amount which was not ascertained.

F. The First Appellate Authority has ignored the crucial point of law that the appellant have paid the duty under Section 125(2) of the Customs Act, 1962 which prescribes that where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person preferred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods. Therefore, the amount paid by the appellant as per the direction of the Commissioner (Appeals) in his Order dated 16/08/2011 and not under the adjudication proceedings initiated under Section 28 of the Customs Act, 1962. It is

important to note that any duty which are not paid or short-paid or short levied or erroneously refunded a notice under Section 28 of the Customs Act, 1962 is required to be issued and under that provisions recovery can be made but in the present case, vide Order dated 16/08/2011 the Commissioner (Appeals) has categorically held that when the goods are still in Customs Area, the duty can only be demanded in terms of Section 125(2) of the Customs Act, 1962, and this implies that duty has to be paid as per the assessment order and not under Section 28 of the Customs Act, 1962 and therefore it is not correct to held that only section is changed for demanding duty. The entire scope of demand raised in the Show Cause Notice gets changed and hence there is no question of paying any interest under Section 125 (2) of the Customs Act, 1962 when there is no demand under Section 28 of the said Act.

G. That the First Appellate Authority has mis-interpreted the Order passed by the Hon'ble Gujarat High Court in the petition filed by the petitioner and wrongly issued notice for recovering the warehouse charges and interest, whereas there is no provision in law to recover such amount in the Customs Act, 1962. The Hon'ble Court has directed the authority to issue show-cause notice upon the appellant with respect to warehousing charges and/or interest liability on duty of the petitioner "if any" within a period of four weeks and thereafter the appropriate authority to pass an appropriate order in accordance with law. The Hon'ble Court has never passed any mandatory action to issue notice if there is no provisions of law and therefore, the notice issued by the Assistant Commissioner itself without any authority of law and hence illegal.

H. That the First Appellate Authority has erred in not appreciating the facts that the Show Cause Notice was issued beyond the period prescribed in the Order passed by the Hon'ble Gujarat High Court and therefore once the time limit was fixed for issuing Show Cause Notice, demand raised in the said Show Cause Notice is not sustainable on time bar as well as on merits. The Hon'ble Court has directed to issue notice if any within 4 weeks but the Assistant Commissioner has not issued the same as per the time period prescribed and therefore the Show Cause Notice was time barred and hence the impugned order is required to be dismissed on this ground itself.

I. The order of the First Appellate Authority is even otherwise illegal, incorrect, erroneous, without any authority in law and jurisdiction.

J. In the above premises, the appellant most respectfully prays the order (A) OIA No. AHD-CUSTOM-000-APP-377-14-15 Dated 8/1/2015 passed by the Commissioner of Customs (Appeals), Ahmedabad, may be set aside with all consequential benefits; Any other further relief as may be deemed fit in the facts and circumstances of the case.

11. Personal hearings in the case was scheduled in the case on 05.09.2019, 01.10.2019. Smt. Anu Agarwal Dy. Commissioner CSMI Airport attended the hearing and contested the revision Application. Opportunities were again extended to the Applicant to attend the personal hearing on 02.03.2021, 09.03.2021, 06.04.2021 13.04.2021 08.07.2021 and 22.07.2021. Mr. Dhaval Shah attended the hearing online on behalf of the Applicant. He reiterated the earlier submissions and submitted that when duty u/s 28 is not there then interest u/s 28AA should not be there. He submitted that he paid duty u/s 125, warehousing amount cannot be charged through a corrigendum.

12. Government has gone through the facts of the case. The Appellate authority has in para 10 of its order dated 08.01.2015 observed that *"the lower authority has correctly held that although the Hon'ble High Court passed the order on 20-11-2013, the same was prepared and notified by the Section Officer, Decree Department on 09-12-2013 and the same was delivered on 11-12-2013, hence the Show Cause Notice was issued well within four weeks from notifying as well as receipt of the order. Also, the Corrigendum was issued before submission of written reply and hence, the same also cannot be said to be non-sustainable.*

13. With regard to the warehousing charges the Appellate authority in its order dated 08.01.2015 states *"The said jewellery was detained as the appellant was not willing to pay the duty and as the appellant did not pay duty, the jewellery was not released, i.e., was kept in the warehouse for want of action from her and not because of inaction by the department. The jewellery was detained vide Panchnama dated 16-06-2009 and was released on the direction of Hon'ble Court. The Airport Authority of India, being custodian of the International Airport, demands charges for the premises allotted to various agencies. Since*



*Customs Department has been allotted office space and the godown being part of office space, charges have been suffered and hence, demand of godown charges is justified. Further, as per Section 125(2) of the Customs Act, 1962, the goods were liable to duty and other charges and hence, the demand of interest is correct. Also, the Commissioner (Appeals) has not dropped the demand of duty and interest outright. Only the Sections of the Customs Act, 1962 have been changed and thus godown charges are rightly demanded.* Government observes that the facts of the case narrated above, indicate that the applicant has contested the liability of duty, as well as redemption fine and penalty upto the stage of the Revision Authority and therefore the applicant cannot be responsible for not lifting the goods till the order of the then Revisionary Authority. The statutes itself provides the remedy to challenge the orders of the original adjudicating authority and the Appellate authority and one cannot be held responsible for the delay, in adjudication of the case. Further, as per section 126(1) of the Customs Act, 1962, when any goods are confiscated under this Act, such goods vest in the Central Government, and 126 (2) directs the officer adjudging confiscation, to take and hold possession of the confiscated goods. Government therefore holds that warehousing charges are not leviable from the date of the seizure as the custody of the seized goods, confiscated, is vested with the confiscating authority by the statute. The warehousing charges have been charged from the date of seizure ie 16.06.2009 and therefore need to be properly quantified, from the date of release of the goods for the delay in lifting the goods, after the order of the then Revisionary Authority.

13. Further, with regard to the interest demanded vide Show Cause notice dated 17-12-2013. The Applicant has pointed out that the customs duty in this case has been paid under section 125(2) of the Customs Act, 1962 and not under section 28 and therefore interest cannot be demanded under section 28AA of the Customs Act, 1962. Government notes that the impugned gold jewelry and the gold studded jewelry was allowed redemption by the then Revisionary authority on payment of redemption fine and penalty. A plain reading of sub-sections (1) and (2) of Section 125 together makes it clear that liability to pay 'duty arises under sub-section (2) in addition to the fine under sub-section (1). The Applicant disputed the customs duty arising after the issue was decided by the Revisionary authority in the case, and preferred filing an Civil Application before the High Court of Gujarat. The Honble High Court of Gujarat disposed of the Civil Appeal with the directions to Applicant to pay

duty and directed the appropriate authority to issue show cause notice with respect to ware housing charges and/or interest liability on the duty of the petitioner if any. Government therefore holds that interest on duty payable has been rightly demanded as per directions of the Hon'ble High Court.

14. Revision Application is accordingly disposed of as above.

*Shrawan Kumar*  
17/8/21  
( SHRAWAN KUMAR )

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

ORDER No. 186/2021-CUS (WZ) /ASRA/MUMBAI DATED: 17.08.2021

To,

1. Smt. Bhartiben Atulkumar Patel, "Guru Krupa", Nandanvan Society, Ashram Road, Nadiad, Dist. Kheda.
2. The Commissioner of Customs, SVPIA Airport, Ahmedabad.

Copy to:

1. Sr. P.S. to AS (RA), Mumbai.
2. Guard File.
3. Spare Copy.