REGISTERED
SPEED POST

F. No. 372/29/B/2017-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue 13/12/18

Order No. 232/18-Cus dated 10-12-2018 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India under Section 129DD of the Custom Act, 1962.

Subject : Revision Application filed under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No.KOL/CUS(CCP)/AA/ 1045/2017 dated 22.9.2017, passed by the Commissioner of Customs (Appeals), Kolkata

Applicant : Mr. Balesh Kumar Jain, Rohini, Delhi

Respondent : Commissioner of Customs, Kolkata

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ORDER

A Revision Application No. 372/29/B/2017-R.A. dated 14.11.2017 has been filed by Mr. Balesh Kumar Jain, a resident of Rohini, Delhi (hereinafter referred to as the applicant) against the Order-in-Appeal No.KOL/CUS(CCP)/AA/1045/2017 dated 22.9.2017, passed by the Commissioner of Customs (Appeals), Kolkata, whereby the appeal of the applicant against the Order of the Additional Commissioner of Customs (Preventive), Kolkata has been rejected on the ground that the applicant did not deposit the required amount as per Section 129E of the Customs Act, 1962..

2. The revision application is filed mainly on the grounds that they had deposited the full amount of duty along with interest, redemption fine and personal penalty much prior to disposal of their appeal and, therefore, rejection of their appeal on the ground that they did not comply Section 129E is completely erroneous. It is further contended that interest is not payable on the goods released to the applicant under Section 125 of the Customs Act, penalty imposed under Section 114AA is not maintainable as they did not make any false or incorrect declaration and this Section was not even invoked in the show cause notice.

3. Personal hearing was held in this case on 04.12.2018 and Shri S.S.Arora, Advocate, appeared on behalf of the applicant. Apart from reiterating the above mentioned grounds of revision, he placed reliance on Tribunal's decisions in the case of Armaity S.Patel Vs. C.C. (Import), Mumbai, 2014(310)ELT313 (Tri.-Mumbai) and Essar Oil Ltd. Vs. C.C.,(Prev.), Jamnagar, 2006(197)ELT450 (Tri.-Mumbai) to support their claim that interest is not payable on confiscated goods released under Section 125 of the Customs Act. However, no one appeared for the respondent and instead Commissioner of Customs (Preventive) vide his letter dated 30.11.18 has asserted that penalty under Section 112 of the Customs At is imposable if not under Section 114AA and interest is also recoverable under Section 28AA of the Customs Act.

4. The Government has examined the matter and it is found from the TR.6 Challans produced by the applicant that the custom duty, redemption fine and personal penalty amount were deposited on 3rd June, 2017 itself on the basis of which the confiscated gold were released to the applicant by the jurisdictional

Assistant Commissioner. Payment of these amounts is confirmed by the Commissioner of Customs also in his above referred letter dated 30.11.18 in reference to the present revision application by stating that the appellants have already taken release of the confiscated gold on deposit of the duty, penalty, interest and redemption fine adjudged by the Additional Commissioner. Thus the amounts of penalty and interest etc. were paid by the applicant much before the OIA was passed. The applicant has claimed that they had even produced the copies of the challans before the Commissioner (Appeals) during the hearing but he did not take cognizance of the payment of all the amounts by them. Since the applicant had deposited total amount of duty, interest, RF and penalty in this case, he was not required to pay additional amounts @7.5% as no amount remained outstanding in this case. Therefore, the Commissioner (Appeals) has wrongly rejected the applicant's appeal on the ground that Section 129E was not complied with. Coming to the point relating to recovery of interest, the Government fully agree with the applicant that the interest is not payable under Section 125 whereunder confiscated goods are released on payment of duty and fine only. While Section 125(2) specifically speaks about payment of fine, duty and other charges, it is silent about the payment of interest in addition to the duty amount from which it is implicit that interest is not payable. Section 28AA is not invokable in such case as interest under this Section can be demanded only when the custom duty is demanded/recovered under Section 28 of the Customs Act which is not the case in the present proceeding as no demand of duty was raised in this case under Section 28. This view is also fully supported by the Tribunal's above referred two decisions in the case of Armaity S.Patel Vs. C.C. (Import), Mumbai, 2014(310)ELT313 (Tri.-Mumbai) and Essar Oil Ltd. Vs. C.C.,(Prev.), Jamnagar, 2006(197)ELT450 (Tri.-Mumbai) which are relied upon by the applicant. Hence, interest was wrongly demanded by the Additional Commissioner vide his OIO. As regards personal penalty, it is manifest from the copy of the show cause notice itself that no penalty was proposed under Section 114AA of the Customs Act and thus penalty under this Section has been wrongly imposed by the Additional Commissioner. Even otherwise also Section 114AA is invokable only where there is false or incorrect declaration of the particulars which is not the departmental case at all against the applicant. On the contrary the

allegation against the applicant is that he did not declare the goods at all for which penalty is imposable under Section 112 of the Customs Act. Therefore, the Government finds merit in the arguments of the applicant that the penalty imposed under Section 114AA is not maintainable. However, The Government cannot overlook the facts that the applicant has certainly indulged into smuggling of gold for which he is liable for penalty under Section 112(B) of the Customs Act which was invoked in the show cause notice also. Since the redemption fine of Rs.1.00 lakh has already been imposed in this case, the Government consider that penalty of Rs.3.00 lakh under Section 112 will meet the end of justice in this case.

5. In view of the above discussions, the Commissioner (Appeals)'s Order is set aside and OIO is modified to the extent that no interest is recoverable in this case and penalty of Rs.3.00 lakh is imposed on the applicant under Section 112(b) of the Customs Act.

10.12.18

(R.P.Sharma)
Additional Secretary to the Government of India

Mr. Balesh Kumar Jain
S/o Late Mr. Narender Kumar Jain
B-15, Plot No.5, Sector-9
Shakti Apartment, Rohini,
Delhi-110085

ORDER NO. 232/2018 Cus dated 10-12-2018

Copy to:-

1. Commissioner of Customs (Preventive), 3rd Floor, Customs House, 15/1, Strand Road, Kolkata-700001
2. The Commissioner of Customs (Appeals), 3rd Floor, Customs House, 15/1, Strand Road, Kolkata-700001.
3. The Additional Commissioner of Customs (Preventive), 3rd Floor, Customs House, 15/1, Strand Road, Kolkata-700001.
4. Shri S.S.Arora, Advocate, B-1/71, Safdarjung Enclave, New Delhi-110029
5. P.S. to AS (RA)
6. Guard File
7. Spare copy

ATTESTED

(Ashish Tiwari)
Assistant Commissioner