



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

F.No. 371/51/B/2017-RA / 3519

Date of Issue 29.07.2020

ORDER NO. 53/2020-CUS (WZ)/ASRA/MUMBAI DATED 21.05.2020 OF
THE GOVERNMENT OF INDIA PASSED BY SHRI SEEMA ARORA, PRINCIPAL
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT,
1962.

Applicant : Shri Shabbir Taherally Udaipurwala

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-084-17-18 dated 06.07.2017 passed by
the Commissioner of Customs (Appeals), Ahmedabad.



ORDER

This revision application has been filed by Shri Shabbir Taherally Udaipurwala (herein after referred to as the Applicant) against the Order in appeal No. AHD-CUSTOM-000—APP- 084 -17-18 dated 06.07.2017 passed by the Commissioner of Customs (Appeals), Ahmedabad.

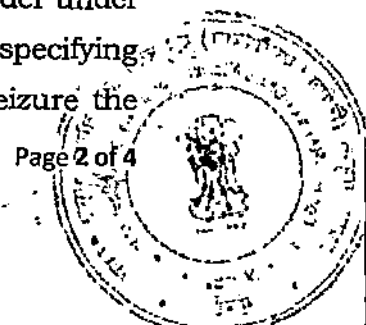
2. Briefly stated the facts of the case is that the applicant arrived at the SVPI Airport on 04.08.2015. The Applicant and his baggage was subjected to a metal detector scan, Two gold bars were recovered from his pocket and two gold bars were recovered from his baggage. The officers thus recovered four bars of gold collectively weighing 466.640 grams, valued at Rs. 10,58,852/- (Rupees Ten lacs Fifty eight Thousand Eight hundred and fifty two)

3. The Original Adjudicating Authority vide Order-In-Original No. 53/JC-BP/SVPIA/O&A/2016 dated 30.08.2016 ordered confiscation of the impugned gold under Section 111 (d) (l) and (m) of the Customs Act,1962, but allowed redemption of the same on redemption fine of Rs. 7,99,396/- (Rupees Seven lacs Ninety nine Thousand Three hundred and Ninety six) and imposed penalty of Rs. 38,172/- (Rupees Thirty eight thousand One hundred and seventy two) under Section 112 (a) of the Customs Act. A penalty of Rs. 10,58,852/- (Rupees Ten lacs Fifty eight Thousand Eight hundred and fifty two) was also imposed under Section 114AA of the Customs Act 1962.

4. Aggrieved by the said order, the applicant as well as the Department filed appeals before the Commissioner (Appeals) who vide Order-In-Appeal No. AHD-CUSTOM-000—APP- 084 -17-18 dated 06.07.2017 disallowed redemption and ordered absolute confiscation of the gold and modified the order of the lower adjudicating authority, without altering the penalties imposed.

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

To make a valid seizure a proper officers is required to pass an order under section 110 of the Customs Act, 1962 prior to affecting seizure specifying the reasons for the exercise of this power; when there is no seizure the



question of confiscation does not arise; With regards to the goods which are not prohibited the section 125 of the Customs Act, 1962 prescribes no discretion but to release goods on redemption as such goods are not harmful to society; the Ld. Appellate authority has failed to appreciate the facts correctly and arrived at erroneous conclusions; Even if it is presumed without accepting that there is a case for confiscation, as there is no ingenious confiscation goods are liable to be released for redemption; There are a catena of cases that have approved the quantum of redemption to the range of 10-20% so as to wipe out the profit margin and to deter repeat offenders; Section 114AA ibid, was introduced primarily to cover the cases of bogus/ fraudulent exports without any documents; It is further submitted that there has to be a consistency in deciding similar issues ;

5.2 The Applicant cited case laws in favour of his case and prayed for release of the gold for re-export and the penalties to be dropped or reduced to a reasonable level, commensurate to the misdemeanor or any other order as deemed fit in the facts and circumstances of the case.

6. A personal hearing in the case was scheduled in the case on 05.12.2019. Advocate for the Applicant Shri Rishikesh J Meher Advocate appeared for the hearing. He pleaded that the Applicant had stayed abroad for 30 years, is an eligible passenger and not a carrier. He produced bills to cover 400 grams of the gold. He was travelling with his wife and prayed that the absolute confiscation of the gold may be set aside and sought leniency in the matter.

FINDINGS AND ORDER

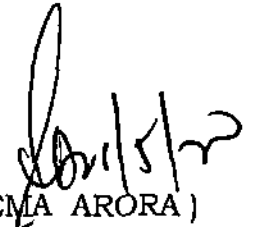
7. The Government has gone through the facts of the case. The Applicant did not declare the gold as required under section 77 of the Customs Act, 1962 and therefore confiscation of the gold is justified. The applicant has been staying abroad for 30 years making him an eligible passenger to import gold on concessional rate of duty. The bills for purchase of 400 grams of the gold have been submitted, therefore the ownership of the gold is not under dispute, and the Applicant is not a known carrier. Finally the gold was recovered from his pocket and baggage it was definitely not concealed ingeniously. Under the circumstances, absolute confiscation in this case is an order in excess and cannot be justified. The Applicant has pleaded for redemption of the gold for re-export on payment of



redemption fine and penalty and the Government, keeping in mind his NRI status, is inclined to accept the plea. The impugned Order in Appeal is therefore required to be set aside.

9. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 466.640 grams valued at Rs. 10,58,852/- (Rupees Ten lacs Fifty eight Thousand Eight hundred and fifty two) is allowed to be redeemed for re-export on payment of redemption fine of Rs. 2,11,000/- (Rupees Two lacs Eleven thousand) under section 125 of the Customs Act, 1962. The penalty of Rs. 38,172/- (Rupees Thirty eight thousand One hundred and seventy two) imposed under section 112(a) is increased to Rs. 1,00,000/- (Rupees One lac). Government observes that once penalty is imposed under section 112(a) of the Customs Act, 1962 there is no necessity of imposing penalty under section 114AA. The penalty of Rs.10,58,852/- (Rupees Ten lacs Fifty eight Thousand Eight hundred and fifty two) imposed under section 114AA of the Customs Act, 1962 is set aside.

10. Revision application is allowed on above terms.



(SEEMA ARORA)

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

ORDER No. 58/2020-CUS (WZ) /ASRA/MUMBAI

DATED 21.05.2020

To,

1. Shri Shabbir Taherally Udaipurwala, 33-39, Maimoon Manzil, 1st Floor, Dimtimkar street, Mumbai 400 008.

Copy to:

1. The Commissioner of Customs, SVPI Airport, Ahmedabad.
2. Shri Rishikesh J. Mehra, Advocate, C/11 Rathi Apartments , Opp. Power House Colony, Dharamnagar, Sabarmati, Ahmedabad - 380 005.
- 2 Sr. P.S. to AS (RA), Mumbai.
- 3 Guard File.
- 4 Spare Copy.

ATTESTED



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

