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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

F.No. 371/23-A/B/2017-RA / 8554

Date of Issue 19.07.2020

ORDER NO. 61/2020 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 Basheer Mohammed Mansuri

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-107-16-17 dated 21.03.2017 passed by the Commissioner of Customs (Appeals), Ahmedabad.



ORDER

This revision application has been filed by Shri Basheer Mohammed Mansuri (herein after referred to as the Applicant) against the Order in appeal No. AHD-CUSTOM-000—APP- 107-16-17 dated 21.03.2017 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 13.04.2015. His baggage was subjected to a metal detector scan, wherein dark images were seen. On opening the officers recovered a stainless steel box containing metal covered with an aluminium foil. On enquiry the Applicant revealed it to be gold. The officers thus recovered seven pieces of gold collectively weighing 2004.000 grams, valued at Rs. 48,76,132/- ( Rupees Forty eight lacs Seventy six Thousand One hundred and thirty two )

3. The Original Adjudicating Authority vide Order-In-Original No. 20/ADC-AK/SVPIA/O&A/2016 dated 30.08.2016 ordered absolute confiscation of the impugned gold under Section 111 (d) (l) and (m) of the Customs Act, 1962, and imposed penalty of Rs. 8,00,000/- ( Rupees Eight lacs ) under Section 112 (a) of the Customs Act. A penalty of Rs. 6,00,000/- ( Rupees Six lacs ) 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- 107-16-17 dated 21.03.2017 rejected the appeal of the Applicant.

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

The orders of the Ld. Adjudicating Authority as well as that of Ld. Appellate Authority are patently erroneous having been passed on wrong assumptions and pretensions and incorrect appreciation of the law and needs to be set aside; The Applicant had already told the officers that he had gold with him and had asked the officers as to what is to be done as declaration forms were not readily available, The officer directed the Applicant to the a Uniformed officer and before he could do the same he was incepted by an AIU officer and a case was registered; The signatures of the Applicant were taken on the declaration form after the panchanama was drawn as there in no mention of the declaration form on the panchanama; The gold brought for the Applicants sons educational funding and his daughters



marriage; The Applicant had produced the bills and the same is recorded in the panchanama; His repeated visits to India were due to two civil cases at his native village; The Applicant being NRI was wrongly advised that he could carry 10 kgs of gold; He has a shop in Kuwait and has been staying in Kuwait for the last 30 years; 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; 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 illiterate and is an eligible passenger. The bills of purchase have been produced. The advocate pleaded that there was no ingenious concealment and cited earlier orders and prayed that the absolute confiscation of the gold may be set aside and sought redemption of the gold on fine and penalty.

#### 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. However the Government notes that the Applicant is an NRI having stayed abroad for 30 years and is an eligible passenger to import gold on concessional rate of duty. The bills for purchase of the gold have been submitted, therefore the ownership of the gold is not under dispute, and the Applicant is not a carrier. The gold was recovered from a stainless steel box, though concealed it cannot be termed as concealed ingeniously as precious items are normally concealed for safety. Further the Applicant had admitted to carrying gold when his baggage was screened. Under the circumstances, Government observes that a proper declaration should have been filed the therefore confiscation of the gold is justified, however, absolute confiscation. Dispossess the Applicant, of the gold, would be harsh and an order in excess and



unjustified. Further, there are numerous case laws which have held that in the liberalized era gold being a restricted item should be allowed for redemption on suitable fine and penalty. 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 the facts related to the seizure and the fact that the applicant is not an habitual offender is inclined to accept the plea. The impugned Order in Appeal is therefore required to be set aside.

8. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 2004 grams valued at Rs. 48,76,132/- ( Rupees Forty eight lacs Seventy six Thousand One hundred and thirty two ) is allowed to be redeemed for re-export on payment of redemption fine of Rs. 14,62,000/- ( Rupees Fourteen lacs Sixty two thousand ) under section 125 of the Customs Act, 1962. The penalty of Rs. 8,00,000/- ( Rupees Eight lacs ) imposed under section 112(a) is appropriate. 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. 6,00,000/- ( Rupees Six lacs ) imposed under section 114AA of the Customs Act, 1962 is set aside.

9. Revision application is allowed on above terms.

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

ORDER No. 61 /2020-CUS (WZ) /ASRA/MUMBAI DATED 21/5/2020.

To,

1. Shri Basheer Mohammed Mansuri, S/o Fakir Mohammed Mansuri, VPI-Bhinder, Tehsil-Vallabh Nagar, Dist Udaipur, Rajasthan 313 603.

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.)

