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

F.No. 380/106/B/14-RA/326

Date of Issue 29/08/2018

ORDER NO. 632/2018-CUS (WZ) / ASRA / MUMBAI/ DATED 21.08.2018
OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR
MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD
OF THE CUSTOMS ACT, 1962.

Applicant : Commissioner of Customs, Ahmedabad

Respondent : Shri Archit Ramjibhai Patel
Shri Amit Vijay Chokshi

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. AHM-
CUSTM-OOO-APP-261 and AHM-CUSTM-OOO-APP-262
both dated 28.08.2014 passed by the Commissioner of
Customs (Appeals), Ahmedabad.



ORDER

This revision application has been filed by Commissioner of Customs, Ahmedabad (herein referred to as Applicant) against the order no AHM-CUSTM-OOO-APP-261 AND AHM-CUSTM-OOO-APP-262 both dated 28.08.2014 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. Briefly stated the facts of the case are that the Respondents, Shri Archit Ramjibhai Patel and Shri Amit Vijay Chokshi (herein referred to as 1st respondent and 2nd respondent respectively) arrived at Sardar Vallabhbhai Patel International Airport on 01.05.2014 and 28.06.2014 respectively. They were intercepted in the green channel and two gold chains and one gold bar totally weighing 242.620 gms valued at Rs. 6,35,781/- was recovered from the 1st respondent. Similarly, one gold chain and one kada weighing 369.400 gms valued at Rs. 9,17,772/- was recovered from the 2nd respondent.

3. 3.1 After due process of the law vide Order-In-Original No. 15/JC/SVPIA/O&A/2014 dated 08.05.2014 the Original Adjudicating Authority ordered confiscation of the gold weighing 242.620 gms valued at Rs. 6,35,781/- brought by the 1st respondent under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act. But allowed redemption of the gold on payment of Rs. 1,80,000/- as redemption fine and imposed penalty of Rs. 1,60,000/- under Section 112 (a) of the Customs Act, 1962.

3.2 The Original Adjudicating Authority vide order 41/JC/SVPIA/O&A/2014 dated 04.07.2014 also ordered confiscation of the gold weighing 369.400 gms valued at Rs. 9,17,772/- brought by the 2nd respondent under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act. But allowed redemption of the gold on payment of Rs. 3,00,000/- as redemption fine and imposed penalty of Rs. 2,50,000/- under Section 112 (a) 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. AHM-CUSTOM-OOO-APP-261 and AHM-CUSTOM-OOO-APP-262 both dated 28.08.2014 reduced the redemption fine of the 1st respondent from Rs. 1,80,000/- to Rs. 60,000/- and reduced the redemption fine of the 2nd respondent from Rs. 3,00,000/- to Rs. 75,000/- and set aside the penalty of both the respondents and modified the order in originals of the applicant.

5. The applicant has filed this Revision Application inter alia on the following grounds that

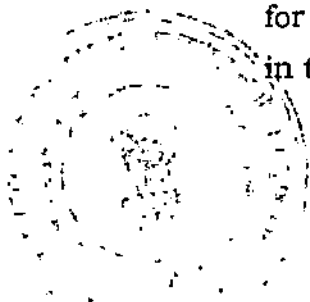
5.1 The Commissioner (Appeals) while passing orders in Appeal has erred on the following grounds; The clearance of baggage of a passenger is governed by the provisions of section 77 to section 81 of the Customs Act, 1962: Therefore it is obligatory on the part of the passenger to declare the goods; Both the passengers knowingly failed to declare the gold jewelry and opted for the green channel.

5.2 The provision of section 123 of the Customs Act, 1962 are clear that in case of seizure of the gold the burden of proving that they were not smuggled is on the passenger, thus when the passenger opts for the green channel the burden to prove that the goods are not smuggled lies squarely on the passenger;

5.3 As the goods have become liable for confiscation for non declaration penalty has to be imposed on the passenger mandatorily; The option for re-export is not available to such passengers as re-export is allowed only if the passenger has declared the goods.

5.3 Further if the order in Appeal is accepted it will set a convenient precedent to such offenders and by pleading ignorance they shall have the option of getting their illegal consignments re-exported and forfeit themselves from confiscation and penalty; The decision of the Commissioner (Appeals) to allow re-export set aside the demand of duty and setting aside the penalty therefore runs contra to the law and is not just and proper.

5.4 The Revision Applicant cited case laws in their defense and prayed for setting aside the order in Appeals, and pass such order as deemed fit in the interest of justice.



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6. A personal hearing in the case was scheduled to be held on 13.06.2018, the Shri Ramjeebhai, father of Shri Archit Ramjibhai Patel and Shri Amit Vijay Chokshi attended the hearing, they re-iterated the submissions made in the order in Appeal and pleaded that the Revision Application be dismissed. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. A written declaration of goods was not made by the Applicant as required under Section 77 of the Customs Act, 1962, inspite of being repeatedly asked whether they were carrying any goods liable to Customs duty they have replied in the negative, and under the circumstances confiscation of the goods is justified.

8. As per the section 111(m) of the Customs Act, 1962 goods which do not corresponds in respect of value or any other particular with the declaration made under Section 77 of the Customs Act, 1962, are liable for confiscation. Accordingly, the Order-In-Original has rightly held that the goods the goods liable for confiscation and however taking a sympathetic view has allowed redemption of the gold imposing redemption fine and penalty. The Government notes that the Commissioner (Appeals) has accepted that as the quantity of the gold was more than 100 gms declarations by the passengers was definitely called for. But the Appellate authority has set aside the penalty, reduced the redemption amount and allowed re-export. The order thus runs contrary to the law. Penalty becomes mandatory when goods are liable for confiscation. The Applicants have rightly pointed out that once the goods are held liable for confiscation under section 111 ibid, penalty has to be imposed on the offender mandatorily. The setting aside of the penalty in the Appellate order, when goods are held liable for confiscation is therefore contrary to the law. The Government further notes that the redemption fine should be sufficient enough to deter the passengers in refraining from such activities in the future. The impugned Orders in Appeal therefore needs to be set aside, and the orders in original are required to be upheld.

9. Government therefore sets aside the Order in Appeal no AHM-CUSTOMS-OOO-APP-261 dated 28.08.2014 and the Order in Appeal no AHM-CUSTOMS-OOO-APP-262 dated 28.08.2014 passed by the Commissioner of Customs



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(Appeals), Ahmedabad. The Order-In-Original No. 15/JC/SVPIA/O&A/2014 dated 08.05.2014 and the Order-In-Original No. 41/JC/SVPIA/O&A/2014 dated 04.07.2014 issued by the Original Adjudicating Authority is upheld as legal and proper.

10. The Revision Application is allowed on above terms.

11. So ordered.

(Signature)
24.8.18

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. ⁶³²/2018-CUS (WZ) /ASRA/MUMBAI, DATED 21.08.2018

To,

1. The Commissioner of Customs,
RRA Section, Mrudul Tower,
Behind Times of India,
Navrangpura, Ahmedabad.
380 009.

2. Shri Shri Archit Ramjibhai Patel
2A Dhukliya Kot Govt. Quarters,
Opp NCC Ground,
Ellisebridge, Ahmedabad.

3. Shri Amit Vijay Chokshi
New Alkapuri Society, Vijay Villa,
B-N0. 1, Gulbai Tekra, Amdavadi,
Ahmedabad.

ATTESTED

(Signature)
21.8.18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

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

