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SPEED POST



GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,

Mumbai-400 005

F.No. 371/15-A/B/18-RA } 2059

Date of Issue 28.11.2018

ORDER NO. 732/2018-CUS (WZ)/ASRA/MUMBAI DATED 24.09.2018 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 : Shri. Mustafa Fakhruddin Khanbhiwala

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-86-87/2017-18 Dated 07.07.2017 passed by the Commissioner of Customs (Appeals), Ahmedabad.



ORDER

This revision application has been filed by Shri. Mustafa Fakhruddin Khanbhiwala (herein referred to as Applicant) against the order in appeal . AHD-CUSTOM-000-APP-86-87/2017-18 Dated 07.07.2017 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. Briefly stated facts of the case are that the Air Arabia Crew members on 21.03.2015 handed over a plastic bag containing gold in the form of rollers wheels and wires to the Customs officers. The gold totally weighing 1049.76 gms and valued at Rs. 24,72,185/- (Rupees Twenty Four lakhs Seventy two thousand One hundred and Eighty Five) in the form of rollers wheels and wires were attached to the Applicants baggage and was discovered and detained by the Security officers at Sharjah and handed to the Air Arabia Crew members to be handed over to the Customs authorities in India.

3. The Original Adjudicating Authority, vide order No. 54/JC-BP/SVPIA/O&A/2016 dated 30.08.2016 confiscated the gold mentioned above under section 111 (l) & (m) of the Customs Act, 1962 , But allowed redemption of the gold on payment of a fine of Rs. 18,90,641/-. A Personal penalty of Rs. 8,91,223/- was imposed under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by this order the Applicant and the department both filed an appeal with the Commissioner of Customs (Appeals) Ahmedabad, who vide his order No. AHD-CUSTOM-000-APP-86-87/2017-18 Dated 07.07.2017 ordered absolute confiscation of the gold and rejected the Appeal of the Applicant.

5. The Revision Application has been filed interalia on the following grounds, requesting the following issues to be addressed that;

5.1 There is no evidence that the Air Arabia staff had detected the gold wires and trolley wheels from the baggage of the Applicant; These details do not find a mention in the panchanama; Therefore the officers are relying on hearsay and there was no concealment detected by the Customs Officers; Gold is not a prohibited item; The Applicant had declared the gold in his embarkation slip and therefore he had no intention to evade payment of



duty; The bonafides of the Applicant is unchallenged by documentary evidence; The Applicant had modified the gold so as to avoid getting looted on the highway; The gold was recovered at Sharjah Airport by the security staff and delivered to the Indian Customs Officers, the gold was not concealed in any manner; The Applicant has prayed for reduction of redemption fine and penalty before the Commissioner(Appeals) assuming that the confiscation was legal and proper, as redemption fine is imposed with the intention to end the margin of profit; The Commissioner(Appeals) did not discuss the afore said issues in the Appellate order; The order of absolute confiscation of gold which is not a prohibited item but a restricted one is absolutely illegal and arbitrary; The ratios of the judgements of the relied upon by the Appellate authority are not applicable to the case;

5.2 The Revision Applicant cited various case laws in support of his case and pleaded for setting aside the order in Appeal and set aside redemption fine and personal penalty or any orders as deemed fit.

6. A personal hearing in the case was held on 06.08.2018, the Applicant attended the hearing. He re-iterated the submissions filed in Revision Application and submitted that the order in appeal be set aside and revision application be allowed. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. It is observed that the gold was recovered by the Security officers at the Sharjah Airport and handed over to the crew of the Air Arabia to be further handed over to the Customs Authorities in India. The gold was detained by the Security officers at Sharjah as they noticed that the gold wire and the trolley wheels were attached to the Applicants baggage with an intention to smuggle it to India and therefore it was removed and detained. The concealment was planned ingeniously so as to avoid detection by the Customs Authorities in India. Mensrea in the case is clearly indicated. Further, considering the short stay of the Applicant abroad and the considering the quantity of the gold seized, the gold cannot be termed as bonafide baggage. The declaration made by the Applicant at the airport in India thus clearly comes about as an attempt to recover the gold after failing in the attempt to smuggle it. The said offence was committed in a premeditated and clever manner



and clearly indicates mensrea, and if he was not intercepted before the exit, the Applicant would have taken out the gold without payment of customs duty.

8. The above acts have therefore rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed a penalty on the Applicant. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority. The Appellate order No. AHD-CUSTOM-000-APP-86-87/2017-18 Dated 07.07.2017 passed by the Commissioner of Customs (Appeals), Ahmedabad, is therefore upheld as legal and proper.

9. Revision application is accordingly dismissed.

11. So, ordered.

Ashok Kumar Mehta
24.9.18

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

ORDER No. ⁷³²72018-CUS (SZ) /ASRA/MUMBAI.

DATED 24.09.2018

To,

Shri. Mustafa Fakhruddin Khanbhiwala
Husami Mohalla,
Juni Kacheri, Puyga,
Dahod-389 151.

Copy to:

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

ATTESTED

S.R. Hirulkar
28/11/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)



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8th Floor, World Trade Centre, Centre - I, Cuffe Parade,

Mumbai-400 005

F.No. 380/02/B/2015-RA

2014

Date of Issue

28.11.2014

ORDER NO. ⁷⁸⁰2018-CUS (SZ) / ASRA / MUMBAI / DATED 28.09.2018 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 (Airport) Chennai.

Respondent: Shri Mohamed Aslam Hussain

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus No. 80/2014 dated 20.11.2014 passed by the Commissioner of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by Commissioner of Customs (Airport) Chennai, (herein referred to as Applicant) against the Order in Appeal C. Cus No. 80/2014 dated 20.11.2014 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. On 18.07.2014 the respondent arrived at the Chennai Airport. Examination of his hand baggage resulted in the recovery of one gold bar weighing 116.5 gms valued at Rs. 2,97,570/- (Rupees Two lakhs Ninety Seven thousand Five hundred and Seventy). The gold bars were recovered from the personal search of the Respondent.

3. After due process of the law vide Order-In-Original No. 889/2014 Batch A dated 18.07.2014 the Original Adjudicating Authority ordered absolute confiscation of the goods under Section 111 (d) (l) and (m) of the Customs Act, 1962, and imposed penalty of Rs. 30,000/- under Section 112 (a) of the Customs Act,1962 on the Respondent.

4. Aggrieved by the said order, the respondent filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 80/2014 dated 20.11.2014 allowed the redemption of the gold on payment of applicable duty and a redemption fine of Rs. 30,000/- but made no changes in the penalty imposed and allowed the appeal of the respondent.

5. Aggrieved with the above order the Applicants have filed this revision application interalia on the grounds that;

5.1 The Order of the original adjudicating authority had reasoned that the redemption under section 125 in lieu of confiscation not mandatory as the Respondent had attempted to smuggle the gold by way of ingenious concealment; He was not an eligible passenger and had a culpable mind to smuggle the gold into India; The respondent has contravened the section 77 of the Customs Act, 1962, The Appellate authority without considering the same has allowed redemption of the gold; Eligibility to import gold is covered under notification No. 12/2012

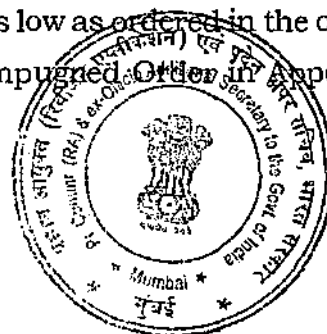


-Cus dated 17.03.2012; The passenger does not fulfill all the conditions for concessional rate of duty; Even though the grounds were stated by the adjudicating authority while upholding absolute confiscation the Appellate authority has allowed release of the gold; The Appellate authority wrongly allowing clearance of the gold is not acceptable as the passenger had intentionally not declared the gold;

5.2 The Revision Applicants cited case laws in support of their case and prayed that the order of the Appellate authority be set aside and the order of the Lower adjudication authority be restored or such an order as deemed fit.

6. In view of the above, the Respondent and his Advocate was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit, and accordingly a personal hearing in the case was scheduled held on 19.07.2018, 20.08.2018 and 10.09.2018. However, neither the Respondent nor his advocate attended the said hearing. The case is therefore being decided exparte on merits.

7. The Government has gone through the case records it is observed that the gold bar were recovered from the respondents pant pockets and it was not declared by the Respondent and therefore, confiscation of the gold is justified. However the gold was not indigenously concealed. Import of gold is restricted not prohibited and the ownership of the gold is not disputed. Absolute confiscation in the case is very harsh and unjustified. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. The Government therefore is inclined to agree with the Order-in-Appeal in allowing the gold on redemption fine and penalty. Government however notes that the redemption fine and penalties should be commensurate to the offence committed so as to dissuade such acts in future. The Respondent had brought the gold bars and though it was not concealed ingeniously, he did not declare it as required under section 77 of the Customs Act, 1962 and therefore the redemption fine cannot be as low as ordered in the order in Appeal. Government is of the opinion that the impugned Order in Appeal is therefore liable to be modified.



8. The impugned Order in Appeal is modified as below. The Government allows redemption of the gold, weighing 116.5 gms valued at Rs. 2,97,570/- (Rupees Two lakhs Ninety Seven thousand Five hundred and Seventy) The redemption fine imposed is increased from Rs. 30,000/-/- (Rupees Thirty thousand) to Rs. 1,16,000/- (Rupees One lakh sixteen thousand) under section 125 of the Customs Act, 1962. The penalty of Rs. 30,000/- (Rupees Thirty thousand) imposed on the Respondent under section 112(a) of the Customs Act, 1962 is appropriate.

9. Revision application is partly allowed on above terms.

10. So, ordered.

(Handwritten Signature)
28/9/18

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

ORDER No. 780/2018-CUS (S Z) /ASRA/MUMBAI

DATED 28-09-2018

To,

1. The Commissioner of Customs, (Airport) Chennai,
New Custom House,
Chennai-600 001.
2. Shri Mohamed Aslam Hussain
S/o Uppalluru Munavvar Hussain,
21-636-6, New LIC office,
Poraddatu, Kadapa,
PIN: 516 350.

Copy to:

3. The Commissioner of Customs (Appeals-I), Chennai.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

ATTESTED

(Handwritten Signature)
28/9/18

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

