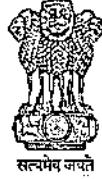


REGISTERED
SPEED POST

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

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

Mumbai-400 005

F.No. 380/50/B/14-RA

Date of Issue 27.11.2018

ORDER NO. 760/2018-CUS (WZ) / 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 : Principal Commissioner of Customs (Airport), Ahmedabad.

Respondent : Shri Mahendrabhai Amin

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 535/2013/CUS/Commr(A)/AHD Dated 03.12.2013 passed by the Commissioner of Customs (Appeals), Ahmedabad.

ORDER

This revision application has been filed by Commissioner of Customs, Mumbai, (herein referred to as Applicant) against the Order in Appeal No. 535/2013/CUS/Commr(A)/AHD Dated 03.12.2013 passed by the Commissioner of Customs (Appeals), Ahmedabad

2. On 12.11.2012 the respondent arrived at the Ahmedabad Airport from USA and declared having brought 30 pieces of gold bars weighing 935.9 grams, totally valued at Rs. 28,29,770/- (Rupees Twenty eight lakhs Twenty Nine thousand Seven hundred and Seventy). As the Respondent did not fulfil the conditions for concessional rate of duty, The gold was released at full rate of duty of 36.03% ie Rs. 10,20,132/-.

3. Being aggrieved with the order of assessment the Respondent filed appeal before the Commissioner (Appeals) interalia stating that he had declared the gold, the gold was brought for personal use and not for commercial trading and his request for re-export was denied. The Commissioner (Appeals) vide Order-In-Appeal No. 535/2013/CUS/Commr(A)/AHD dated 03.12.2013 passed set aside the impugned order of assessment and directed the adjudicating authority to re-assess the impugned gold by granting the benefit of SI. No. 321 of Notification No. 12/2012-Cus dated 17.03.2012 and partially allowed the appeal of the Respondent.

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

4.1 The Order of the Commissioner (Appeals) has erred in holding that Shri Mahendrabhai Amin should be allowed to pay duty, at the rate by applying exemption under SI. No. 321 of Notification No. 12/2012 - Cus dated 17.03.2012, observing that the said passenger was "eligible passenger", as defined in the explanation to condition no. 35 of the said notification. In fact, the said explanation describes that passenger must have stayed not less than six months abroad, Ignoring the total period 30 days of short visits made during the period of such stay. Thus, in reckoning such period of stay abroad, it is deemed that the total period of 30 days, spent in short visits made during the above period, shall be construed and considered as spent abroad so as to be an eligible passenger. The

Commissioner (Appeals) has erred in applying the doctrine of liberal construction even though the language / wordings used in the explanation are unambiguous, certain, unclouded and on-susceptible of more than one meaning or shades of meaning. Had the respondent gone abroad before 07.12.2012, he would have been an eligible passenger.

4.3 In view of the above, the instant Order-In-Appeal 535/2013/Cus/Commr(A)/AHD, dated 03.12.2013, passed by the Commissioner (Appeals) is not proper and legal and therefore, it is prayed that the Order in Appeal be set aside and the Order in original be upheld.

5. 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 19.06.2018. The Respondent with his consultant advocate Shri R. R. Dave attended the hearing and in his written submissions interalia submitted that;

5.1 The Respondent is a USA Citizen who has travelled on 08.06.2012 and stayed abroad till 12.11.2012 and has not visited in India and availed the benefit of Notification No. 12/2012-Customs Dated: 17.03.2012, therefore the Respondent is ELIGIBLE PASSENGER before.

5.2 The Respondent is also of the view that the Lower Appellant Authority has properly and legally interpreted the text of explanation provided under Notification that "and short visits, if any, made by the eligible passenger during the aforesaid period of Six Months shall be ignore if the total duration of stay on such visit does not exceed 30 days" it means that if there are no visits by the Passenfger then the 30 days must be deducted from the total stay of Six Months abroad; Accordingly, the respondent has rightly submitted that he had departed from India lastly on 08.06.2012, and after 156 Days he arrived in India on 12.11.2012, i.e. there was a short period of 24 day for completion of 180 Days (Six Months)" ; that "the Condition No. 35 of Notification No. 12/2012-Customs Dated: 17.03.2012, is unambiguous that the claimant of the Notification must have stay not less than Six Month of abroad, but has also provided ignoring short visits of maximum of 30 days". Therefore, if short visit of 30 Days ignore (deduct) than a period of stay of Five Month abroad is sufficient to make a PAX an

2

ELIGIBLE PASSENGER; in the present case, the respondent is stay abroad more than Five Months and therefore he is an eligible passenger and the duty is required to be paid as per Sr. No. 321 of Notification No 12/2012-Customs Dated: 17.03.2012.

6. The Government has gone through the facts of the case. The main issue to be addressed in the case is whether the Respondent is eligible for concessional rate of duty on the impugned gold and whether the Respondent is an "eligible passenger". The explanation defining and eligible passenger for availing exemption under SI. No. 321 of Notification No. 12/2012 - Cus dated 17.03.2012 the eligible passenger is detailed below;

" Explanation.- For the purposes of this notification, "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits."


The cursory reading of the above explanation are clear and unambiguous. It is clear that an eligible passenger has to complete a period of six months abroad, the short visits if any have to fall between two dates , covering aforesaid period of six months. The Respondent in the impugned case has departed from India on 08.06.2012, and he has arrived in India on 12.11.2012, after 156 Days i.e. there was a short period of 24 day for completion of 180 Days (Six Months). Therefore, the respondent is an in-eligible passenger to avail the benefit of the impugned notification and subsequent concessional rate of duty. In his order the Commissioner (Appeals) has erred in holding that the short visits of 30 days allowed to be taken in between the period of six months, by implication would mean that a stay abroad of 150 days would suffice. The Applicants are right in holding that if the respondent gone abroad before 07.12.2012, he would have been an eligible passenger as, he would have completed the required period of 180 days.

7. Further, The order of the Appellate authority seeks to accede to the Respondents appeal to ignore the shortfall of 24 days would set a precedent for such future cases, creating a situation of largesse not intended by the impugned notification. The impugned Appellate order is therefore required to be set aside and the order in original needs to be upheld.

8. The impugned Order in Appeal 535/2013/CUS/Commr(A)/AHD Dated 03.12.2013 passed by the Commissioner of Customs (Appeals), Ahmedabad is therefore set aside. Order-In-Original issued by the Original Adjudicating Authority is upheld as proper and legal.

9. Revision application is allowed on above terms.

10. So, ordered.


28/9/18

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

ORDER No. 760/2018-CUS (WZ) /ASRA/MUMBAI.

DATED 28-09.2018

To,

1. The Commissioner of Customs (Airport),
Gujarat,
Ahmedabad.
2. Shri Mahendrabhai Amin
Karma Bungalow , Karamsad,
V.V. Nagar,
Anand,
Gujarat.

Copy to:

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