

ORDER

This revision application has been filed by Commissioner of C. Ex, Customs & Service Tax, Calicut, (herein referred to as Applicant) against the Order in Appeal No CAL-EXCUS-000-APP-123-15-16 dated 24.08.15 passed by the Commissioner of C. Ex, Customs & Service Tax (Appeals), Cochin.

2. On 07.12.2012 the respondent arrived at the Calicut Airport. Examination of his baggage resulted in the recovery of Five gold coins totally weighing 40 gms valued at Rs. 1,23,420/- (Rupees One lakh Twenty three thousand Four hundred and Twenty). The gold coins were recovered from the wallet from his pant pocket.

3. After due process of the law vide Order-In-Original No. 74/2012 dated 07.12.2012 the Original Adjudicating Authority ordered confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962, but allowed redemption of the same on payment of Rs. 3,000/- as redemption fine and imposed penalty of Rs. 5,000/- under Section 112 (a) of the Customs Act,1962 on the Respondent. A penalty of Rs. 5,000/- under Section 114AA of the Customs Act,1962 was also imposed on the Respondent.

4. Aggrieved by the said order, the Department filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal CAL-EXCUS-000-APP-123-15-16 dated 24.08.15 observed that the redemption fine, penalty was very low and therefore increased the redemption fine to Rs. 9,000/- and also increased the penalty under Section 112 (a) of the Customs Act,1962 to Rs. 20,000/- and allowed the appeal of the department.

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

5.1 The Commissioner (Appeals) has increased the Redemption fine and penalty, however he has not considered that the passenger was not entitled to import gold, and as such he is not entitled to concessional rate of duty; Therefore the release of the gold on concessional rate of duty is

not proper; In view of, the above the order of the Commissioner (Appeals) is not legal and proper.



5.2 The Revision Applicants prayed that after taking into consideration the above facts, whether the Appellate order was legally correct and proper and prayed for 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 on 24.07.2018, 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 coins were not declared as required under section 77 of the Customs Act, 1962 by the Respondent. Therefore the confiscation of the gold is justified.

8. However Government notes that the gold was not indigenously concealed. Import of gold is restricted not prohibited and the ownership of the gold is not disputed. The respondent is a college lecturer by profession and does not have any past offences registered against him. The Government therefore is inclined to take a lenient view on the issue and agrees with the Order-in-Appeal and the Original adjudicating Order in allowing the gold on redemption fine and penalty. Government observes that the redemption fine and penalties should be commensurate to the offence committed, the Commissioner (Appeals) observing that the redemption fine and penalty was very low has suitably increased the redemption fine and penalty. The Commissioner (Appeals) has also observed that the Respondent has arrived after spending six months abroad. Under the circumstances, Government is of the opinion that the redemption fine and penalties imposed by the Appellate authority to be appropriate and therefore the impugned Order in Appeal is liable to be upheld. The Government however notes that no penalty is imposable under section 114AA of the Customs Act, 1962 as this provision is not attracted in baggage cases. The penalty under 114AA of the Customs Act, 1962 therefore needs to be set aside.

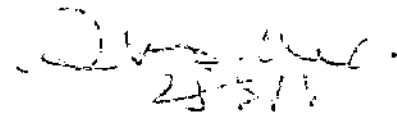
9. The Government therefore is not inclined to interfere with the impugned Order in Appeal CAL-EXCIS-000-APP-123-15-16 dated 24.08.15 passed by



the Commissioner of C. Ex, Customs & Service Tax (Appeals), Cochin. The impugned Order in Appeal is upheld as legal and proper except the penalty of Rs. 5,000/- (Rupees Five thousand) imposed under section 114AA of the Customs Act, 1962 by the Original Adjudicating Authority in the Order-In-Original has been incorrectly imposed, the same is therefore set aside.

10. The Order in Appeal is modified to the extent above, Revision application is dismissed.

11. So, ordered.


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

ORDER No. 773/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 28.09.2018

To,

1. The C. Ex, Customs & Service Tax, Calicut,
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 Mananchira,
 Calicut - 673 001.
 Kerala.

2. Shri Salim Sahib Pallivayal
 Pallivayal P.O.,
 Taliparamba,
 Kannur 670 142.

ATTESTED


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

Copy to:

3. The Commissioner of C. Ex, Customs & Service Tax (Appeals), Cochin.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

