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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.371/18/B/2017-RA/3426

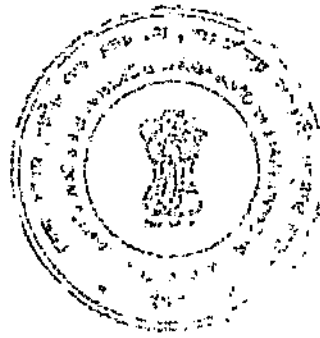
Date of Issue 28.07.2020

ORDER NO. 78/2020-CUS (WZ)/ASRA/MUMBAI DATED 22.06.2020 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 Mohammed Mohsin Mobin Shaikh

Respondent : The Commissioner of Customs, Pune

Subject : Revision Applications filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. PUN-EXCUS-001-APP-467-16-17 dated 02.03.2017 passed by the Commissioner (Appeals-I), Central Excise, Pune.



ORDER

The revision application has been filed by the Shri Mohammed Mohsin Mobin Shaikh (herein after referred to as the Applicant) against the order in Appeal No. PUN-EXCUS-001-APP-467-16-17 dated 02.03.2017 passed by the Commissioner (Appeals-I), Central Excise, Pune.

2. Briefly stated facts of the case are that an Officer of Customs noticed two persons exchanging a packet in the customs area near the gents toilet. The two persons were intercepted and the packet retrieved. Investigations revealed that Shri Basir Shaikh, Senior attendant,(House Keeping) with the Airport Authority of India had received the packet from the Applicant passenger Shri Mohammed Mohsin Mobin Shaikh Indian citizen, who had arrived from Dubai. Examination of the packet resulted in recovery of three gold pieces wrapped in a plastic tape totally weighing 2116.64 grams valued at Rs. 58,71,559/- (Rupees Fifty eight Lakhs Seventy one thousand Five hundred fiftynine). Investigations revealed that the gold was handed to the Applicant by one person named as Mohammed Jabir in Dubai to be handed over to Shri Bashir Shaikh an employee Airport Authority of India. As the employees of the Airport Authority of India are not usually examined at the exit, Shri Bashir was alleged to smuggle the same out of the airport without the payment of customs duty.

3. After due process of the law vide Order-In-Original No. Pune-CUSTOM-000-ADC/01/2016-17 dated 13.04.2016 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (i) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 10,00,000/- (Rupees Ten lacs) under Section 112 (a) and (b) of the Customs Act,1962 on the Applicant. A penalty of Rs. 2,50,000/- (Rupees Two lacs Fifty thousand) was also imposed under section 114AA of the Customs Act,1962 on the Applicant.

4. Aggrieved by this order the Passenger filed an appeal with the Commissioner of Customs (Appeals), Commissioner (Appeals) vide his order Appeal No. PUN-EXCUS-001-APP-467-16-17 dated 02.03.2017 allowed the gold to be redeemed on payment of Rs. 14,70,000/- (Fourteen lacs Seventy



6. In view of the above, a personal hearing in the case was held on 12.12.2019. Shri N. J. Heera, Advocate attended the hearing and reiterated the submissions in the Revision Applications and pleaded for leniency in the case. Nobody from the Respondent side attended the hearing.

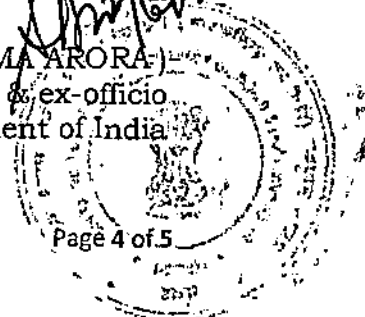
7. The Government has gone through the case records. It is observed that the Applicant far from declaring the gold, handed it over to a house keeping staff of the Airport authority of India. The plan was to smuggle the gold out of the Airport evading customs duty as the house keeping staff of the Airport authority of India are not subjected to a check when leaving the Airport premises. He was however intercepted. The entire modus operandi was very well planned so as to smuggle the gold into India. This is not a simple case of mis-declaration. In this case the Applicant has blatantly tried to smuggle the gold into India in contravention of the provisions of the Customs, 1962. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and if he was not intercepted, the Applicant would have succeeded in taking out the gold without payment of customs duty. The Government therefore holds that the Appellate Authority has been very considerate in allowing the confiscated gold to be released on payment of redemption fine. Be that as it may the Applicant is not entitled to any further benefit. Under the circumstances the Revision Application is liable to be rejected.

8. Accordingly, the impugned Order in Appeal No. PUN-EXCUS-001-APP-467-16-17 dated 02.03.2017 passed by the Commissioner (Appeals), Pune is upheld. Government however observes that once penalty has been imposed under section 112(a) and (b) there is no necessity of imposing penalty under section 114AA. The penalty of Rs. 2,50,000/- (Rupees Two lacs Fifty thousand) imposed under section 114AA of the Customs Act, 1962 is set aside.

ATTESTED

9. So, ordered.

B. LOKANATHA REDDY
Deputy Commissioner (R/As)
Principal Commissioner & ex-officio
Additional Secretary to Government of India



thousand) alongwith applicable customs duty and rejected rest of the appeal of the Passenger.

5. Aggrieved with the above order the Applicant has filed this revision application along with an application for condonation of delay, interalia on the grounds that;

1. The impugned order passed by the Respondent is bad in law and unjust.
2. The Applicant submits that the impugned order has been passed without giving due consideration to the documents on record and facts of the case.
3. The Ld. Respondent authority ought to have appreciated that dutiable goods brought in by the Applicant are neither restricted nor prohibited. The Applicant when arrived at the Pune International Airport was found with 583.65 grams valued at Rs.15,55,427/- which were alleged to be not declared by the Applicant.
4. This is the first time that the Applicant has brought this type of goods and there is no previous case registered against him.
5. It is submitted that under section 125 the redemption fine has to be imposed by the respondent authority to the extent of difference between CIF and Market value to wipe out the margin of profit.
6. The Applicant submits that the department has not given any local market value and in the absence of the same the margin of profit cannot be ascertained and in this case there is no margin of profit left after payment of 36.05% of duty and therefore the heavy fine imposed is totally unjustified.
7. In a similar type of case the same adjudicating authority has imposed 10% of personal penalty, 20% redemption fine and released similar quantity of gold. In this case the same authority has imposed 20% personal penalty and absolutely confiscated the gold and subsequently the Ld. Respondent has ordered to release the said goods on heavy redemption fine of Rs. 14,70,000/- which is totally unjustified.
8. The Redemption Fine imposed may kindly be set aside or any other order as your kind self may deem fit.



ORDER No. 78/2020-CUS (WZ) /ASRA/mumbai

DATED 22-06-2020

To,

Shri Mohammed Mohsin Mobin Shaikh,
44/19 Samuel Street,
R. No. 19, 4th Floor,
Hamidiya bldg.,
Dongri, Mumbai - 400 009.

Copy to:

1. The Commissioner (Customs) Pune, Pune International Airport, Pune.
2. Shri N. J. Heera, Advocate, Nulwala Building, 41, Mint Road, Fort, Mumbai - 400 001.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

