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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.371/41/B/2017-RA / 355-8

Date of Issue 29.07.2020

ORDER NO. 84/2020-CUS (WZ)/ASRA/MUMBAI DATED 23.06.2020 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 Govind Rameshlal Ahuja

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-563-564-16-17 dated 31.03.2017 passed by the Commissioner (Appeals-I), Central Excise, Pune.



ORDER

The revision application has been filed by the Shri Govind Rameshlal Ahuja against the order in Appeal No. PUN-EXCUS-001-APP-563-564-16-17 dated 31.03.2017 passed by the Commissioner (Appeals-I), Central Excise, Pune.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Govind Rameshlal Ahuja Indian citizen, at the Pune International Airport, on 12.01.2016 after he attempted to pass through the green channel. Screening of his bags showed some incriminating items. Examination of his baggage and person resulted in recovery of four gold pieces ingeniously concealed in the wheels of the trolley bags brought by him. The gold totally weighed 583.65 grams valued at Rs. 15,55,427/- (Rupees Fifteen Lakhs Fifty five thousand Four hundred and twenty seven).

3. After due process of the law vide Order-In-Original No. Pune-CUSTOM-000-ADC/23/2016-17 dated 15.12.2016 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. 1,75,000/- (Rupees One lac Seventy five thousand) under Section 112 (a) and (b) of the Customs Act,1962. A penalty of Rs. 50,000/-(Rupees Fifty thousand) was also imposed under section 114AA of the Customs Act,1962.

4. Aggrieved by this order the Passenger filed an appeal with the Commissioner of Customs (Appeals), Commissioner (Appeals) vide his order in appeal No. PUN-EXCUS-001-APP-563-564-16-17 dated 31.03.2017 allowed the gold to be redeemed on payment of Rs. 3,88,000/- (Three lacs Eighty eight thousand) alongwith applicable duty and rejected rest of the appeal of the Passenger.

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;



5.1 The impugned order passed by the Respondent is had 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 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. The Statement of our client was recorded by the Customs u/s. 108 of the Customs Act and he accepted the possession and carriage of gold, which was recovered from him.

5. Owner of the goods which was found in his possession and no other person has claimed the ownership of the goods.

6. This is the first time that the Applicant has brought this type of goods and there is no previous case registered against him.

7. The Ld. Commissioner of customs (Appeals) though has ordered the release of gold but has imposed heavy fine to the tune of 25% of the value of goods and Personal Penalty to the tune of 15% of the value of goods; which is on very higher side; as there is duty element of 36.05% also involved which combined together comes to 76% of the value of goods.

8. The Section 125 of the Customs Act, 1962 is totally clear on Redemption Fine which is to be imposed to wipe out the margin of profit, but here in this case, no LMV of the goods is given to ascertain the margin of profit. Moreover, no profit is left after duty element of 36.05%.

Therefore, the Applicant prays:

The Redemption Fine imposed may kindly be SET ASIDE or Reduced substantially.

6. In view of the above, a personal hearing in the case was held on 09.09.2019. Shri N. J. Heera, Advocate attended the hearing and reiterated the submissions in the Revision Applications and pleaded that the redemption fine



and penalty imposed is harsh and needs to be reduced. Nobody from the Respondent side attended the hearing.

8. The Government has gone through the case records. In the interest of justice the delay in filing the revision application is condoned. It is observed that the respondent did not declare the gold and the gold was ingeniously concealed in the wheels of the bags brought by the passenger. The Passenger had concealed the gold deliberately so as to avoid detection and evade Customs duty and smuggle the gold into India. This is not a mere case of mis-declaration. The concealment of gold was done in such a manner so as to smuggle the gold into India in contravention of the provisions of the Customs, Act 1962 by hoodwinking the Customs Officers. The said offence was committed in a premeditated and clever manner and establishes mensrea. The Applicant had willfully hidden the gold ingeniously and if he was not intercepted before the exit, the gold would have been taken out 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 and the Applicant is not entitled to further benefit. Under the circumstances the Revision Application is liable to be rejected.

9. Accordingly, The impugned Order in Appeal No. PUN-CT-APPII-000-89-17-18 dated 19.07.2017 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. 50,000/- (Rupees Fifty thousand) imposed under section 114AA of the Customs Act, 1962 is set aside.

10. So, ordered.

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

(SEEJMA ARORA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India



ORDER No. 84/2020-CUS (WZ) /ASRA/MUMBAI

DATED 23.06.2020

To,

1. Shri Govind Rameshlal Ahuja, Plot No. 10, Indira Gandhi Colony, JariPatka, Nagpur City, 440014

Copy to:

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

