

REGISTERED  
SPEED POST

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

F.No. 371/35/B/2014-RA

Date of Issue 19-11-2018

ORDER NO. 850/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 26.10.2018 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 Anand Pandurang Patil

Respondent : Commissioner of Customs, CSI Airport, Mumbai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM- CUSTM-PAX-APP-446/13-14 dated 08.01.2014 passed by the Commissioner of Customs (Appeals), Mumbai Zone -III.



ORDER

This revision application has been filed by Shri Anand Pandurang Patil, (herein referred to as Applicant) against the Order in Appeal MUM-CUSTOM-PAX-APP-446/13-14 dated 08.01.2014 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated the facts of the case are that the applicant, a Non Resident Indian arrived at the C.S.I. Airport, Mumbai on 02.05.2011. He was intercepted at the Green Channel and examination of his person resulted in the recovery of Seventeen gold bars weighing 746.60 gms and Nokia E7 mobile together valued at Rs.16,25,294/- (Rupees Sixteen Lakhs Twenty Five Thousand Two Hundred and Ninety Four Only). The gold was recovered from the two zipper pouches on his person.

3. After due process of the law vide Order-In-Original No. ADC/RPK/ADJN/07/2012-13 dated 27.04.2012 the Original Adjudicating Authority ordered confiscation of the gold bars & Mobile phone under Section 111 (d), (l) and (m) of the Customs Act, but given an option to the applicant to redeem the goods, in lieu of confiscation, on payment of a fine of Rs. 2,50,000/- under Section 125 of the Customs Act, 1962. The applicant was also ordered to pay duty on gold bars to be paid in convertible foreign currency. A penalty of Rs. 1, 10,000/- under Section 112 (a) and Rs. 50,000/- was also imposed under section 114AA of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) application who vide Order-In-Appeal MUM-CUSTOM-PAX-APP-446/13-14 dated 08.01.2014 upheld the orders passed by the Original Adjudicating Authority.

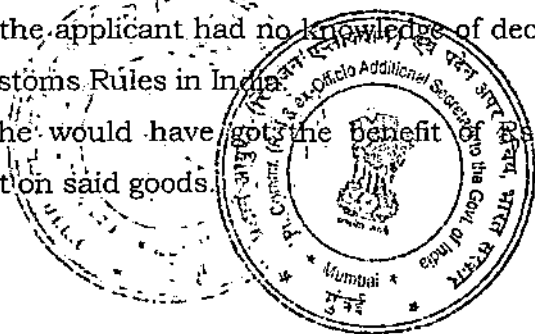
5. The applicant has filed a condonation of delay Application pleading that the delay in filing the Revision Application by 15 days may be condoned. The Revision Application has been filed on the following grounds that

5.1 the applicant is a Chemical Engineer and drawing a salary of Rs. 2 Lakhs p.m.

5.2. the applicant being NRI is eligible to import Gold under Notification.

5.3 the applicant had no knowledge of declaration of goods as he was not aware of the Customs Rules in India.

5.4 he would have got the benefit of Rs. 8,000/- only by not paying the duty amount on said goods.



5.5 imposing heavy fine of Rs. 2,50,000/- and personal penalty of Rs. 1,60,000/- on the said meager duty amount of Rs. 8,000/- is totally unjustified. Also imposing two different penalty amounts under Section 112(a) and Section 114AA of the Customs Act, 1962 is totally unjustified.

4.3 The Revision Applicant submitted with prayer to reduce redemption fine and penalty substantially.

5. A personal hearing in the case was fixed on 04.12.2017, 20.12.2017, 20.02.2018 and 30.05.2016. However, neither the Respondent nor his advocate attended the said hearing. The case is therefore being decided ex parte on merits.

6. The Government has gone through the facts of the case. In the interest of justice, delay of 15 days in filing this Revision application is condoned and revision application is being decided on merits. It is a fact that the gold was not declared by the Applicant as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the gold is justified.

7. However, the facts of the case state that the gold was recovered from the two zipper pouches on his person and it was not ingeniously concealed. The gold is claimed by the Applicant and there is no other claimant. There are no previous offences registered against the Applicant. Gold is not a prohibited but is restricted. The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record to the oral declaration on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant, more so because he is a Non resident Indian.

8. 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. Government notes that the Adjudicating Authority has rightly exercised his discretion of allowing the gold on payment of redemption fine and penalty. Further Government observes that the Appellate Authority has upheld the redemption of the Gold bars and penalty imposed. However, the Government holds that the redemption fine in lieu of confiscation is less and should be enhanced.



9. Government also holds that the Penalty under Section 112(a) is imposable on a person who has made the goods liable for confiscation. But there could be situation where no goods ever cross the border and export was on paper only. Since such situations were not covered for penalty under Section 112/114 of the Customs Act, 1962, Section 114AA was incorporated in the Customs Act by the Taxation Laws (Amendment) Act, 2006. Therefore, once the penalty is imposed under Section 112(a), then for the same act, a separate penalty under Section 114AA is uncalled for.

10. Government accordingly orders increase of redemption fine from Rs. 2,50,000/- to Rs. 5,00,000/- (Rupees Five Lakhs Only) . However, penalty under Section 112(a) imposed by adjudicating authority of Rs. 1,10,000/- meets the ends of justice and subsequently upheld by the appellate authority is appropriate. The penalty of Rs. 50,000/- (Rupees Fifty Thousand Only) under Section 114AA, has been incorrectly imposed, the penalty is therefore set aside.

10. The impugned Order in Appeal stands modified to that extent. Revision Application is partly allowed on above terms.

11. So, ordered.

*Ashok Kumar Mehta*  
26/10/18

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

ORDER No. 850/2018-CUS (SZ) /ASRA/

DATED 26-10-2018

To,

Shri Anand Pandurang Patil,  
Plot No. 4, Mahishanand Building,  
Dman Nagar, Laxmipeth,  
Solapur - 413 001.

**ATTESTED**

*S.R. Hirulkar*  
19/11/18

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

Copy to:

1. The Commissioner of Customs, CSI Airport, Mumbai.
2. The Commissioner of Customs (Appeals), Mumbai Zone III.
3. Shri A.M. Sachwani, -Advocate, Nulwala Building, Ground Floor, 41, Mint Road, Opp. G.P.O., Fort, Mumbai. -400001
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

