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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. 371/05/B/15-RA

Date of Issue

28.11.2018

ORDER NO ⁸⁶⁹ /2018-CUS (WZ) / ASRA / MUMBAI/ DATED 31.10.2018 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 Rajkumar.

Respondent : The Commissioner of Customs, Airport, Ahmedabad.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 563/2013/Cus/Commr(A)/AHD dated 12.12.2013 passed by the Commissioner of Customs (Appeals), Ahmedabad.



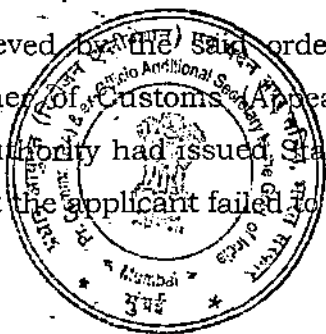
ORDER

This revision application has been filed by Shri Rajkumar (herein referred to as Applicant) against the Order in Appeal No 563/2013/Cus/Commr(A)/AHD dated 12.12.2013 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. The applicant had arrived at Ahmedabad from Sharhah on 20.09.2012 by Air Arabia Flight No. G9-0481 and was intercepted while exiting through Green Channel. Examination of the baggage carried by the applicant revealed his possession of 16kgs of undeclared Synthetic Diamond Powder in crystal form which after proper valuation by a registered valuer was found to be of Rs. 4.40 lakhs . The subject goods were not declared by the applicant and also were not part of the permissible baggage, hence were confiscated by Customs Officers. The applicant in his statement recorded on 20.09.2012 stated that the impugned goods were given to him at his residence at Dubai by Shri Rajendra Sharma who was working in the same company where applicant works. The applicant was informed by Shri Rajendra Sharma that a person would reach his residence at Ajmer to collect the impugned goods. However, the applicant could not produce the person to whom the goods to be delivered.

3. After due process of the law vide Order-In-Original No. 8/AC/RKN/AP/SVPIA/2012-13 dated 17.03.2013, the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d), (l) and (m) of the Customs Act, 1962 with the option to the applicant to redeem the goods recovered from his possession on payment of a fine Rs. 2,00,000/- under Section 125 alongwith the duty under Section 125(2) of the Customs Act, 1962. The Original Adjudicating Authority also imposed penalty of Rs. 75,000/- under Section 112 of the Customs Act, 1962.

4. Aggrieved by the said order, the Appellant filed an Appeal before the Commissioner of Customs (Appeals), Ahmedabad with stay application. The appellate authority had issued Stay Order No. 25/AHD/2013 dated 14.10.2013 holding that the applicant failed to bring out any strong ground for waiver of pre-



deposit of the amounts arising out of the impugned order and hence directed him to deposit Rs. 1,00,000/- towards duty and Rs. 50,000/- towards penalty and report compliance within 21 days. The appellate authority further vide Order in Appeal No. 563/2013/Cus/Commr(A0/AHD dated 12.12.2013 rejected the appeal filed by the applicant for non-compliance of pre-deposits as per the Stay Order No. 25/AHD/2013 dated 14.10.2013

5. Aggrieved with the above order the Applicant has filed this revision application inter alia on the grounds that;

5.1 he denies all the allegations and averments made vide the OIO and OIA.

5.2 he had not declared the imported goods.

5.3 whether custom duty demand from the appellant was justifiable, when appellant was not an owner of the goods.

5.4 whether lapse on the part of passenger for non declaration were liable to redemption fin and penalty or not.

5.5 whether appellant liable for the penalty U/S 112(a) of the Customs Act, 1962.

6. The Applicant has, therefore, requested to drop the proceedings against appellant in the interest of justice with consequential relief.

7. A personal hearing in the case was fixed on 16.07.2018 and 23.08.2018. Shri Nilesh Mehta, Advocate appeared on 23.08.2018 on behalf of the applicant. However, he was unable to produce the Vakalatnama and hence the case was adjourned to 20.09.2018, However, neither the Respondent nor his advocate attended the said hearing. The case is therefore being decided exparte on merits

8. The Government has gone through the case records it is observed the applicant have failed to deposit the pre-deposit amount within time given to them. It is also observed that they have not given any reasonable ground for such inaction on their part and pleaded that the proceeding against applicant may be dropped. Hence the appellate authority rejected the appeal.



9. The Government observes that the argument was made in various cases, and various High Courts have accepted this position of law.

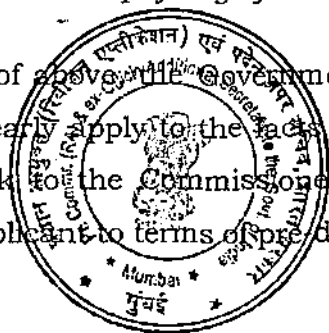
9.1 In *BD Steel v. UOI* [1998 (103) ELT 218 (Bom DB)], Division Bench of the Bombay High Court held,

"It is, therefore, clear that the impugned order came to be passed without hearing the petitioner. Dismissal of its appeal simplicitor for non-compliance of the condition for grant of stay, we feel, has no relation with dismissal of appeal in default. The Tribunal ought to have decided the appeal on merits. Since there is failure of principles of natural justice the impugned order is liable to be set aside and the matter requires to be remanded to the appellate authority for disposal in accordance with law."

9.2 Madhya Pradesh High Court examined the matter on legality and held in *Kishori Pujari v. UOI* [2005 (184) ELT 225 (MP)],

"Having considered the rival submission and on appreciation of the legal principles that emerges on a reading of the judgments referred to hereinabove, it is clear that when the petitioner had a statutory right of filing appeal before the Tribunal and in exercise thereof appeal was filed, petitioner had a right of hearing and the petition has to be heard and decided on merit until and unless the Tribunal found that the appellant was not appearing and arguing the matter deliberately dismissal of appeal mechanically by order simpliciter by direction is not justified. Even if the petitioner does not comply with the direction for deposit of the amount the only consequence thereof would have been rejection of the prayer made for interim relief on stay and to direct for recovery of amount in accordance with law. Dismissing the appeal merely on the ground that direction of pre-deposit having been fulfilled is not proper. That apart, the direction for pre-deposit has to be considered in the back drop of the financial hardship if any of the appellant."

10. In view of above, the Government is of considered opinion that the cited judgements clearly apply to the facts of the instant case. The case is, therefore, remanded back to the Commissioner (Appeals) to decide it on merit without putting the applicant to terms of pre-deposit under Section 129E of Customs Act,



1962. The matter shall be decided by the Commissioner (Appeals) within four weeks from receipt of this order.

11. The Revision Application is allowed on above terms.

12. So, ordered.

(Signature)

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 869/2018-CUS (WZ) /ASRA/mumbai

DATED 31.10.2018

To,

1. Shri Rajkumar,
3-K-18, Ajai Nagar,
Ajmer, Rajasthan. .

Copy to:

1. The Commissioner of Customs (Appeals), Ahmedabad.
2. The Commissioner of Customs (Airport), Ahmedabad.
3. Shri Vipul B. Kandhar, Advocate, 311, Dhiraj Avenue, Opp. Chhadawad Police Chowky, Ambwadi, Ahmedabad- 380006.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

ATTESTED

(Signature)
28/11/18

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

