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GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,

Mumbai-400 005

F.No.380/181/B/16-RA/3319 Date of Issue 28.07.2020

ORDER NO. 86 /2020-CUS (WZ) / ASRA / MUMBAI/ DATED 23.06.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Commissioner of Customs (Airport), Pune.

Respondent : Shri Sarvajeet Singh Khattra

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. PUN-EXCUS-001-APP-116/16-17 Dated 18.08.2016 passed by the Commissioner (Appeals-1) Central Excise, Pune-1.



ORDER

This revision application has been filed by Commissioner of Customs (Airport), Pune, (herein referred to as Applicant) against the Order in Appeal No. PUN-EXCUS-001-APP-116/16-17 Dated 18.08.2016 passed by the Commissioner (Appeals-1) Central Excise, Pune-1.

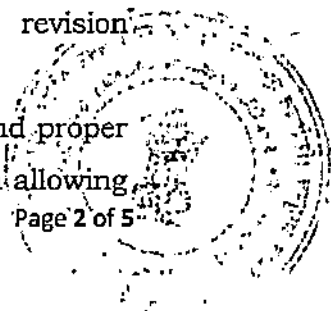
2. On 18.01.2015 the Respondent arrived at the Pune International Airport from Dubai. He was intercepted when he attempted to pass through the green channel. Examination of his person resulted in the recovery of a gold metal plate kept in his wallet and another similar plate from the back of his mobile cover along with a gold chain worn by him. The gold totally weighed 233.31 gms and valued at Rs. 6,52,101/- (Rupees Six lacs Fifty two thousand One hundred and one). In addition to the above the officers recovered 2000 gutka pouches, 30 packets of saffron weighing 25 grams each, 20 baby diapers concealing 2 packets of saffron weighing 25 grams each and 4000 memory chips.

3. After due process of the law vide Order-In-Original No. PUN-CUSTOM-000-ADC-30/15-16 DATED 22.03.2016 the Original Adjudicating Authority ordered confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962 and allowed redemption on payment of Rs. 1,30,000/- (Rupees One Lac Thirty thousand) under section 125 of the Customs Act, 1962. The Original Adjudicating Authority ordered absolute confiscation of the memory chips, saffron and Gutka and imposed personal penalty of Rs. 65,000/- (Rupees Sixty five thousand) under Section 112 (a) of the Customs Act, 1962, and a penalty of Rs. 15,000/- (Rupees Fifteen thousand) under Section 114AA of the Customs Act, 1962.

4. Aggrieved by the said order, the Applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal PUN-EXCUS-001-APP-116/16-17 Dated 18.08.2016, observed that the redemption fine and the penalty imposed to be appropriate and rejected the appeal of the Applicant.

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

1. The order of the Commissioner (Appeals) is not just, legal and proper to the extent of reversing the order of the Adjudicating authority in allowing



the passenger to redeem the gold. The case laws relied upon by the Appellate authority appears not to be squarely applicable to the instant case; The Commissioner (Appeals) has erred by interpreting the section 125 of the Customs Act, 1962 in isolation rather than interpreting it along with other relevant sections; The Commissioner (Appeals) has erred by not interpreting Para 3 of CBEC Circular No. 495/5/92-Cus.VI dated 10.05.1993 in an appropriate manner; The literal interpretation of the words "prohibited goods" and the contention that gold is not notified and therefore liable for release would cut down the wide ambit of inbuilt prohibitions and restrictions; Gold may not be enumerated as prohibited goods, still if the conditions for such import are not complied with, it would fall under the definition of "prohibited goods"; The Adjudicating authority erroneously had given the option to the passenger to redeem the smuggled gold on payment of redemption fine in lieu of confiscation, contrary to Board circulars dated 10.05.1993 and 06.03.2014 and Appellate authority has upheld the order hence the orders need to be set aside.

5.2 The Revision Applicant cited case laws in support of their contention and prayed that the impugned Order in Appeal and the order in original be set aside be upheld and /or any other order as deemed fit.

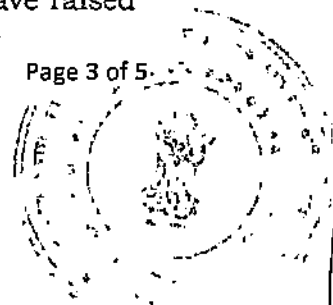
6. A personal hearings in the case were scheduled on 04.09.2018, 30.10.2018 and 06.11.2018 and was finally held on 05.12.2019. Shri Motilal S. Shette, Deputy Commissioner attended the hearing, he re-iterated the submissions filed in Revision Application. The respondent in the case did not attend the hearing.

7. The Government has gone through the facts of the case. The written declaration of the impugned goods was not made by the Respondent as required under Section 77 of the Customs Act, 1962 and the Respondent preferred to use the facility of the green channel inspite of having dutiable goods, under the circumstances confiscation of the goods are justified.

8. The facts of the case state that gold was recovered from the Applicant's wallet from his trouser pocket and from the cover of his mobile phone. Though concealed it cannot be termed as ingenious concealment. Further, import of gold is restricted not prohibited. The Applicants in their grounds of appeal have raised



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issues which are mostly irrelevant to the matters at hand. Section 125 of the Customs Act, 1962 clearly mandates giving the option of redemption to the owner or to the person from whose possession the goods were recovered. The wording of the section 125 make it amply clear that the discretion to allow redemption or not, lies with the adjudicating authority. The Original Adjudicating authority has taken cognizance of the above facts, and rightly allowed redemption of the gold. The redemption fine of Rs. 1,30,000/- under section 125 of the Customs Act,1962 on the gold valued at Rs.6,52,101/- (Rupees Six Lakh Fifty Two Thousand One Hundred and One) is appropriate. Government observes that the rest of the goods brought by the applicant are in commercial quantity and part of the goods is prohibited. These goods were also ingeniously concealed. Government agrees that these goods are liable to be absolutely confiscated. Government's views are therefore congruent with the adjudicating authority and also agrees with the Appellate authority who has rightly upheld the order of the lower authority.

9. The Government notes that the penalty of Rs. 65,000/- imposed under section 112(a) of the Customs Act,1962 is appropriate, and the impugned orders do not warrant any interference and the Revision Application is liable to be rejected. Government however observes that once penalty has been imposed under section 112(a) there is no necessity of imposing penalty under section 114AA. The penalty of Rs. 15,000/- (Rupees Fifteen thousand) imposed under section 114AA of the Customs Act,1962 is set aside.

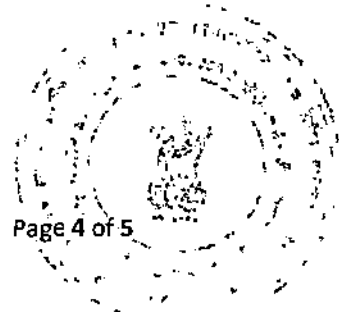
10. The Revision Application is disposed off on above terms.

11. So, ordered.

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

ATTESTED

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



ORDER No. 86 /2020-CUS (WZ) /ASRA/ Mumbai DATED 23.06.2020

To,

1. The Principal Commissioner of Customs (Airport),
Chatrapati Shivaji International Airport, Terminal -2, Mumbai.
2. Shri Sarvajeet Singh Khattra , R.C. Barrack 38, Room No. 446, Chembur
Camp, Mumbai 400 074.

Copy to:

1. The Commissioner of Customs (Appeals), Mumbai-III.
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.

