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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. 380/136-A/B/WZ/2016 -RA

Date of Issue 30.11.2018

ORDER NO. 942 /2018-CUS (W Z) / ASRA / MUMBAI/ DATED 12.11.2018
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 : Commissioner of Customs, Ahmedabad.

Respondent : Smt Nisreen Abdeali Kapadia.

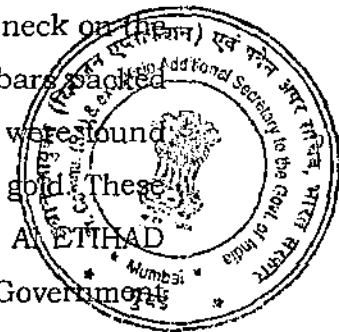
Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
AHD-CUSTM-000-APP-017-16-17 dated 23.05.2016
passed by the Commissioner of Customs (Appeals),
Ahmedabad.



ORDER

This Revision Application has been filed by Principal Commissioner of Customs, Ahmedabad (herein referred to as Applicant) against the Order in Appeal No AHD-CUSTOM-000-APP-017-16-17 dated 23.05.2016 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. The issue in brief is that on 24.01.2015 Smt Nisreen Abdeali Kapadia, holding Indian Passport No. H-1764687, arrived at SVPI Airport, Ahmedabad from Sharjah. She had opted for Green Channel and had handed over the Indian Customs Declaration Form to the custom officers wherein she had not declared anything dutiable. The last date of departure of the Respondent was 22.01.2015 and she had arrived on 24.01.2015. Due to her short visit and suspicious movements/ behaviour, she was diverted to Red Channel for examination of the baggage. On checking her hand baggage/ purse physically apart from the Boarding pass, ticket of Air Arabia Airways and her passport, some invoices were found providing details of purchase of gold. Thereafter, in the presence of the independent panchas, the lady custom officer asked the respondent to remove all metallic substances from her body and she readily removed 8 gold bangles and then while passing through the Door Frame Metal Detector (DFMD) installed in the Arrival Hall near the Customs Area, it alerted with a beep sound which indicated the presence of metallic substances in the upper and middle part of her body. On inquiring, she informed that she had worn a gold chain and hence she was asked to remove the chain and once again pass the DGMD. On passing the DGMD it again alerted with a beep sound, therefore the Respondent was physically checked with metal detector and searched by hand on the neck on the back side, two chains were found. On further examination, metallic bars packed in three different bunches (7+1 gold bars) with transparent plastic were found concealed inside her upper under garments, which she confirmed as gold. These packets were opened and found gold bars with the marking "10 Tola AETIHAD DUBAI-UAE PURITY 999.0%". Thereafter, Shri Devang Ratilal Soni, Government Approved Valuer, confirmed that the bangles, chains and bars were of pure gold having purity of 999.0% total weighing 1628.570 gms and valued Rs. 40,48,542



tariff value and Rs. 46,42,592/- market value. The details of gold item-wise are as under :

Sl.No	Description	Weight in grams
1	Bangles – 08 Pcs	466.640
2	10 Tola bars –07 Pcs	816.700
3	One Piece of cut gold bar	111.990
4	Chain – 01 Pcs	116.550
5	Chain – 01 Pcs	116.690
	Total	1628.570

The Respondent was arrested under Section 104 of the Customs Act, 1962 and was released on conditional bail. Accordingly a Show Cause Notice dated 08.87.2015 was issued to the Respondent.

3. After due process of the law, the Additional Commissioner of Customs, CSIA, Mumbai vide Order-In-Original No. 07/ADC-AK/SVPIA/O7A/2016 dated 09.02.2016, ordered absolute confiscation of the seized gold i.e. 04 bangles, chains and tola bars totally weighing 1628.570 gms and valued Rs. 40,48,542 tariff value and Rs. 46,42,592/- market value under Section 111 (d) (l) and (m) of the Customs Act, 1962. He also imposed penalty of Rs.7,50,000/- (Rupees Seven Lakhs Fifty Thousand Only) under Section 112 of the Customs Act,1962 and penalty of Rs. 5,00,000/- under Section 114AA of the Customs Act, 1962 on the Respondent.

4. Aggrieved by the said order, the Respondent filed appeal before the Commissioner of Customs (Appeals), Mumbai Zone-III. who vide Order-In-Appeal No. AHD-CUSTOM-000-APP-017016-17 dated 23.05.2016 reduced the penalty to Rs. 50,000/- (Rupees Fifty Thousand Only) under Section 112 of the Customs Act,1962 and other parts of the Order-in-Original dated 09.02.2016 was into interfered with.

5. Aggrieved with the above order, the Applicant has filed the Revision Application on the following grounds :

5.1 The Commissioner of Customs(Appeals) has erred in holding that there was no systematic attempt to smuggle the goods. From the facts of this case, it was established that the Respondent worn 8 gold bangles.



rest were found concealed on her body and inside her upper under garments. This is nothing but the systematic attempt to smuggle the gold. Further, the Commissioner(Appeals) has held that the impugned goods became prohibited not because of the definition but because of the manner in which it was attempted to be cleared by the Respondent. This proved that she made systematic attempt to smuggle the gold.

5.2 The Respondent had opted for the modus operandi. She may have enough knowledge of Rule 6 of the Baggage Rules 1998 as gold or silver in any form, other than ornaments are not allowed free of duty. Hence she converted pure gold into jewellery i.e. bangles and chain to prove it was bonafide baggage which is nothing but modus operandi with intent to smuggle the pure gold. The stay of the Respondent was just few days i.e. 2 days and gold recovered from her was pure gold, which is not permissible and it cannot be considered as bonafide baggage under the Customs Baggage Rules, 1998.

5.3 The lower authority had held that the said passenger had taken considerable pain to differentiate between the term "ornaments" and "jewellery" to justify that the gold ornaments possessed by her not prohibited. In the event so, missed the point that the impugned gold ornaments has acquired the nature of "prohibited goods" not because of the definition but because of the manner in which it was attempted to be cleared by the said the passenger. This aspect has been unambiguously clarified by the Hon'ble Supreme Court in the case of Om Prakash Bhatia [2003 (155) ELT 423(SC)]. Hence the Respondent had intentionally made ornaments to prove that the impugned goods are not prohibited goods.

5.4 The act of the Respondent in importing the gold bars for commercial purpose to escape duty liability has proved the contravention of all the provisions of the Customs Act, 1962 is nothing but shows the mens rea of the Respondent.

5.5 From the statement recorded under Section 108 of the Customs Act, 1962, the Respondent admitted that she has opted for Green Channel.



even though she was carrying gold to avoid payment of customs duty; she did not declare the gold brought by her in the Customs declaration form which an intention to evade the Custom duty applicable on the gold place under seizure. It was further admitted that she had tried to conceal the gold in her body to avoid customs duty. The Respondent acts of omission and commission, has rendered herself liable for penalty under Section 112 of the Customs Act, 1962. Further, she had deliberately filed false declaration (embarkation slip) on her arrival which has rendered liable for penalty under Section 114AA of the Customs Act, 1962.

5.6 Prayed that the Order-in-Appeal may be aside and the Order-in-Original may be restored and upheld.

6. Accordingly a personal hearing in the case was held 04.09.2018, 30.10.2018 and 06.11.2018. However neither the Applicant nor his Advocate attended the said hearings. Hence the case is being decided exparte on merits.

7. The Government has gone through the facts of the case. It is a fact that the gold were not declared by the Respondent as required under Section 77 of the Customs Act,1962 and under the circumstances confiscation of the gold is justified.

8. The Government observed that the Respondent had tried to conceal the gold in her body to avoid customs duty. The concealment was planned so as to avoid detection and evade Customs duty and smuggle the gold into India. This is not a simple case of mis-declaration. In this case the Respondent had 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 that the Respondent had no intention of declaring the gold to the authorities and if custom officers had not asked her to pass through the Door Frame Metal Detector (DFMD) installed in the Arrival Hall near the Customs Area, she would have taken out the gold without payment of Customs duty. The Order-in-Appeal reducing the Penalty




under Section 112 of the Customs Act, 1962, therefore is liable to be set aside. The Government holds that no penalty is imposable under Section 114AA of the Customs Act, 1962. The same is liable to be set aside.

9. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed the penalty under Section 112 of the Customs Act, 1962. The penalty imposed under Section 114AA of the Customs Act, 1962 is set aside. In view of the above the impugned Order-in-Appeal No. AHD-CUSTOM-000-APP-017-16-17 dated 23.05.2016 is set aside and the Order-In-Original No. 07/ADC-AK/SVPIA/O/A/2016 dated 09.02.2016 is upheld as legal and proper, except setting aside the penalty imposed under Section 114AA of the Customs Act, 1962.

10. Revision application is partially allowed on above terms.

11. So, ordered.


12111K

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

ORDER No. ⁹⁴²/2018-CUS (WZ)/ASRA/MUMBAI DATED 22.11.2018

To,

1. The Commissioner of Customs
Ahmedabad.

2. Smt Nisreen Abdeali Kapadia,
B-404, Amber Complex,
Opp Vora Colony,
Ajwa Road,
Vadodara.

ATTESTED

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

Copy to:

1. The Commissioner(Appeals), Customs, Ahmedabad.
2. Sr. P.S. to AS (RA), Mumbai.
- ~~3. Guard File.~~
4. Spare Copy

