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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. 380/179/B/16-RA | 22/16

Date of Issue 30.11.2018

ORDER NO. 951/2018-CUS (WZ) / ASRA / MUMBAI DATED
20.11.2018 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 : The Commissioner of Customs, Pune.

Respondent : Shri Naved Gulam Haider Khan, Mumbai

Subject : Revision Application filed, under Section 129DD
of the Customs Act, 1962 against the Order-
in-Appeal No. PUN-EXCUS-001-APP-125-16-17
dated 24.08.2016 passed by the Commissioner
(Appeals-I), Central Excise, Pune.

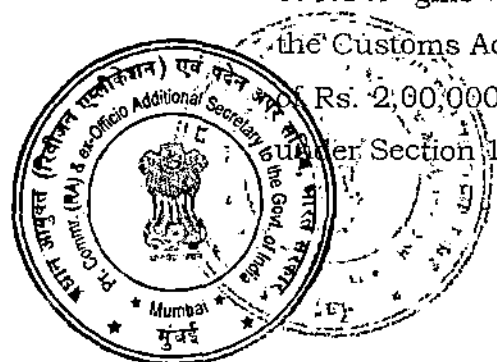


ORDER

This revision application has been filed by Commissioner of Customs, Pune (herein referred to as Applicant) against the Order in Appeal No. PUN-EXCUS-001-APP-125-16-17 dated 24.08.2016 passed by the Commissioner (Appeals-I), Central Excise, Pune.

2. Based on suspicious movements, the passenger, Shri Naved Gulam Haider Khan (herein referred to as "the respondent") was intercepted by the officers of Customs Officers at the Pune International Airport on his arrival by the Flight No. SG-52 from Sharjah on 16.11.2014. The respondent was intercepted when he attempted to pass through the green channel at the Airport after filing the Nil Customs declaration. During the personal search of the respondent, the Customs Officers recovered six yellow metal biscuits purported to be gold which were concealed in his socks / shoes. All these biscuits were similar in shape and were embossed as "CREDIT SUISSE 10 TOLA, 999.0" on each. The respondent told that he took six gold biscuits from Shri Azeem who told him to hand over the same to a person who would contact him in Mumbai. The Govt. approved valuer certified that the impugned six biscuits to be pure gold having purity 999, weighing 699.849 gms and collectively valued at Rs. 18,23,783/- (Rupees Eighteen Lakh Twenty Three Thousand Seven Hundred Eighty Three Only). The Customs officers seized impugned six gold biscuits under the reasonable belief that the same were smuggled into India and hence liable to confiscation under the provisions of the Customs Act.

3. After due process of the law vide Order-In-Original No. PUN-CUSTM-000-ADC-11/15-16 dated 22.09.2015 the Original Adjudicating Authority ordered absolute confiscation of the six gold biscuits weighing 699.849 gms valued at Rs. 18,23,783/- under Section 111 (d), (l) & m of the Customs Act, 1962. The Adjudicating Authority also imposed penalty Rs. 2,00,000/- under Section 112 (a) & (b) as well as Rs. 2,00,000/- under Section 114AA of the Customs Act, 1962 on the Respondent.



4. Aggrieved by the said order, the respondent filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. PUN-EXCUS-001-APP-125-16-17 dated 24.08.2016 gave option to the respondent to redeem six gold biscuits on payment of redemption fine of Rs. 4,40,000/-. The order in original was modified to that extent.

5. Aggrieved with the above order the Department has filed this revision application on the grounds that the option to redeem the seized goods under Section 125 of the Customs Act, 1962 is the discretionary power of the Adjudicating Authority depending on the facts of each case and after examining the merits.

6. The Department requested to set aside the impugned order in appeal and upheld the order in original on the following grounds :-

6.1 The Commissioner (Appeals) had erred by interpreting the Section 125 of the Customs Act, 1962 in isolation.

6.2 Hon'ble Madras High Court in its order dated 23.08.2016 in C.M.A. No. 1631 of 2008 in the matter of Commissioner of Customs (Air) vs. P. Sinnasayhad after elaborate discussion with the regard to release of gold under Section 125 of the Customs Act, 1962 rejected the contention of the appellant that gold can be released as gold is not notified as one of the prohibited goods.

6.3 The respondent had made different versions of statements so as to prove that he had purchased the six gold biscuits. In fact, he could not produce any evidence with regard to his source of money.

6.4 The appellate authority had erred in referring to various orders.

7. A personal hearing in the case was held on 01.10.2018, 30.10.2018 & 06.11.2018. Smt. Sudha Iyer, Superintendent (AIU) attended the hearing on behalf of the Department. She re-iterated the submissions filed in Revision Application.



8. The Government has gone through the case records and it is seen that the respondent arrived at the Pune Airport on 16.11.2014 and was intercepted by the Customs Officers and examination resulted in the recovery of six gold biscuits weighing 699.849 gms valued at Rs. 18,23,783/- ingeniously concealed in the socks / shoes worn by him.

9. The Original Adjudicating Authority absolutely confiscated six gold biscuits weighing 699.849 gms valued at Rs. 18,23,783/- under Section 111 (d), (l) & (m) of the Customs Act, 1962 and imposed the penalty of Rs. 2,05,000/- under Section 112 as well as Rs. 2,00,000/- under Section 114AA of the Customs Act, 1962 respectively. The Commissioner (Appeals), Pune vide his Order-In-Appeal PUN-EXCUS-001-APP-125-16-17 dated 24.08.2016 gave option to the respondent to redeem the goods on payment of redemption fine of Rs. 4,40,000/-. The Appellate Authority modified the order in original to that extent.

10. The Government notes that the respondent has ingeniously concealed six gold biscuits weighing 699.849 gms in the socks / shoes worn by him with the clear intent not to declare it to the Customs Officers and to clear them clandestinely without declaration and without payment of Customs duty. Filing true and correct declaration under the Customs Act, 1962 is an absolute and strict obligation of any passenger. In the instant case, the respondent, on his arrival at Airport, was asked by the Customs Officers as to whether he was carrying any gold / gold jewellery or crude gold in his baggage or on his person to which he replied in the negative. The act on the part of respondent clearly shows his intention to clear the impugned gold without payment of Customs Duty.

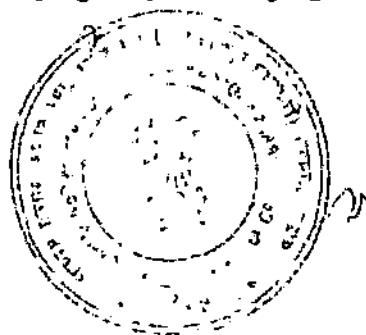
11. It is evident that the respondent has contravened the provisions of Customs Act, 1962. Therefore, the seized gold is liable for absolute confiscation under the provisions the Customs Act, 1962 as the respondent has deliberately concealed the seized gold to avoid detection to dodge the Customs Authorities and smuggle out the same without



payment of appropriate duty. This clearly indicate *mens-rea*, the respondent had no intention of declaring the impugned gold to the authorities and if he was not intercepted before the exit, the respondent would have taken out the impugned gold without payment of Customs duty. Therefore, the Government holds that redemption fine imposed by the Appellate Authority needs to be increased. However, the quantum of penalty imposed under Section 112 of Customs Act, 1962 has to be reduced.

12. In the instant case, the Government finds that the penalty of Rs. 2,00,000/- has been imposed upon the respondent under Section 114AA. In this regard, the 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. Thus, the Government under provisions of Section 129DD(4) modifies the order in original and sets aside the penalty of Rs. 2,00,000/- imposed upon the respondent under Section 114AA.

13. Taking into consideration the forgoing discussion, Government modifies the Order in Appeal No. PUN-EXCUS-001-APP-125-16-17 dated 24.08.2016 to the extent that the redemption fine imposed is increased from Rs. 4,40,000/- to Rs. 7,00,000/- (Rupees Seven Lakh Only) and the penalty imposed under Section 112 of Customs Act, 1962 is reduced from Rs. 2,00,000/- to Rs. 1,40,000/- (Rupees One Lakh Forty Thousand Only). However, the penalty of Rs. 2,00,000/- imposed under Section 114AA of Customs Act, 1962 upon the respondent vide order in original and upheld by the impugned appellate order is set aside..



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14. The Revision Application is dismissed off in terms of above.
15. So, ordered.

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

ORDER No. ⁹⁵¹/2018-CUS (WZ) /ASRA/MUMBAI DATED 20-11-2018

To,

1. The Chief Commissioner of Customs, Pune Zone,
GST Bhavan, ICE-House, 41-A,
Sasoon Road, Opp. Wadia College,
Pune - 411 001.
2. Shri Naved Gulam Haider Khan.
7, Tandel ST North, 1st floor,
R. No. 5, Jatekar Building, Mumbai - 400 009.

Copy to:

1. The Commissioner of Customs (Appeals-I), GST Bhavan, ICE-
House, Sasoon Road, Opp. Wadia College, Pune - 411 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.

ATTESTED

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

