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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. 380/177/B/16-RA/259

Date of Issue 03.12.2018

ORDER NO. 963 /2018-CUS (WZ) / ASRA / MUMBAI DATED
27.11.2018 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 : Smt. Assama Agwan.

Subject : Revision Application filed, under Section 129DD
of the Customs Act, 1962 against the Order-
in-Appeal No. PUN-EXCUS-001-APP-115-16-17
dated 18.08.2016 passed by the Commissioner
(Appeals), Central Excise & Customs, Pune-I.



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-115-16-17 dated 18.08.2016 passed by the Commissioner (Appeals-I), Central Excise & Customs, Pune.

2. Based on suspicious movements, the passenger, Smt. Assama Agwan (herein referred to as "the respondent") was intercepted by the Customs Officers at Pune International Airport on her arrival by the Air India Express Flight No. IX 212 from Dubai on 29.11.2014. During the personal search of the respondent, the Customs Officers recovered eight cut gold bars which were concealed in the white coloured cloth jacket having multiple pockets underneath her kurta. The four cut bars were found embossed as 'AL ETIHAD GOLD, DUBAI-UAE, 1KILO' and other four as "GOLD 99.0" having serial Nos. D129504, D133163, D133157 and D133152. Thus in all eight pieces of gold bars totally weighing 4000.060 gms and was appraised at Rs.1,06,88,160/- (Rupees One Crore Six Lakh Eighty Eight Thousand One Hundred and Sixty Only). The Customs officers seized the impugned gold bars under the reasonable belief that the same were smuggled into India and hence liable to confiscation under the provisions of the Customs Act. The respondent stated that when she went for marketing to 'Al Madina Supermarket' in Dubai, some Indian ladies met her who were unknown to her and during interaction they proposed her to carry gold to India for them. Then she was introduced to on Mr. Munir, who used to send carriers to India alongwith gold. Shri Munir offered her Rs. 8,000/- and free return ticket to carry gold to India on 28.11.2015. Shri Munir handed over the gold totally weighing approx 4 kgs were wrapped in a plastic pouch covered with paper and cello tape alongwith invoices against the purchase of the gold and white coloured cloth jacket having multiple pockets. She was directed to conceal the gold pieces in those pockets and wear the said jacket and was instructed to flush the invoices in the toilet after clearing through the immigration. She was further



directed to hand over the impugned gold to a person who would contact her at the Pune International Airport and would pay her Rs. 8,000/-.

3. After due process of the law vide Order-In-Original No. PUN-CUSTM-000-ADC-29/15-16 dated 18.03.2016 the Original Adjudicating Authority ordered absolute confiscation of the eight cut gold bars totally weighing 4,000.060 gms valued at Rs. 1,06,88,160/- under Section 111 (d), (l) & m of the Customs Act, 1962 and an option was given to the respondent to redeem the gold on payment of a fine of Rs.21,50,000/- under Section 125(1) alongwith duty under Section 125(2) of the Customs Act, 1962. The Adjudicating Authority also imposed penalty of Rs. 10,75,000/- under Section 112 (a) & (b) and Rs. 1,25,000/- under Section 114AA of the Customs Act, 1962 on the Respondent.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals), Pune-I challenging the decision of the Adjudicating Authority in allowing an option to the respondent to redeem eight cut gold bars totally weighing 4000.060 gms valued at Rs. 1,06,88,160/- . The Appellate Authority vide Order-In-Appeal No. PUN-EXCUS-APP-115-16-17 dated 18.08.2016 had rejected the department's appeal and upheld the order of Adjudicating Authority

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 pleaded to set aside the impugned order in appeal.

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 on 01.10.2018. She re-iterated the



submissions filed in Revision Application. However, the respondent did not appear for the personal hearing.

8. The Government has gone through the case records and it is seen that the respondent arrived at the Pune International Airport on 29.11.2014 and was intercepted by the Customs Officers. The personal search of the respondent resulted in the recovery of eight cut gold bars of which were concealed in the white coloured cloth jacket having multiple pockets underneath her kurta. The impugned eight cut gold bars were totally weighing 4,000.060 gms valued at Rs. 1,06,88,160/- .

9. The Original Adjudicating Authority absolutely confiscated 4,000.060 gms. of gold valued at Rs. 1,06,88,160/- under Section 111 (d), (l) & (m) of the Customs Act, 1962 with an option to redeem the gold on payment of a fine of Rs.21,50,000/- under Section 125(1) alongwith duty under Section 125(2) of the Customs Act, 1962. The Adjudicating Authority also imposed penalty of Rs. 10,75,000/- under Section 112 (a) & (b) and Rs. 1,25,000/- under Section 114AA of the Customs Act, 1962 on the Respondent. The Appellate Authority upheld the order of the adjudicating authority.

10. The Government notes that the respondent has ingeniously concealed eight cut gold bars totally weighing 4000.060 valued at Rs. 1,06,88,160/- 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 her arrival at Airport, was asked by the Customs Officers as to whether she was carrying any gold / gold jewellery or crude gold in her baggage or on her person to which she replied in the negative. The act on the part of respondent clearly shows her intention to clear the impugned gold without payment of Customs Duty.

11. It is evident that the respondent has contravened the provisions of the Customs Act, 1962. Therefore, the seized gold is liable for absolute confiscation under the provisions of the Customs Act, 1962 as the respondent has deliberately concealed the seized gold to avoid detection and 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. The Government finds that the department did not produce details of cases filed against respondent in which she was involved in any offences and it was a hardcore attempt on her part to smuggle the goods into India. In view of the above facts, the Government is of the opinion that the original Adjudicating Authority has rightly given option the respondent to redeem the impugned gold on payment of redemption fine.

However, the Government holds that redemption fine imposed by the Adjudicating Authority needs to be increased and the quantum of penalty imposed under Section 112 of Customs Act, 1962 could be reduced.

12. In the instant case, the Government finds that the penalty of Rs. 1,25,000/- 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. 1,25,000/- imposed upon the respondent under Section 114AA.

ATTESTED

13. Taking into consideration the forgoing discussion, Government modifies the Order in Appeal No. PUN-EXCUS-001-APP-115-16-17 dated 18.08.2016 to the extent that the redemption fine imposed is increased from Rs. 21,50,000/- to Rs. 40,00,000/- (Rupees Forty Lakh Only) and the penalty imposed under Section 112 of Customs Act, 1962



380/177/B/16-RA

is reduced from Rs. 10,75,000/- to Rs. 9,00,000/- (Rupees Nine Lakh Only). However, the penalty of Rs. 1,25,000/- imposed under Section 114AA of Customs Act, 1962 upon the respondent vide order in original and uphold by the impugned appellate order is set aside.

14. The Revision Application is allowed in terms of above.

15. So, ordered.

Ashok Kumar Mehta
27.11.18

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

ORDER No. ⁹⁶³/2018-CUS (WZ) /ASRA/MUMBAI DATED 27.11.2018

To,

1. The Commissioner of Customs,
ICE House, 41/A, Sassoon Road, Pune - 411 001.
2. Smt. Assama Agwan,
101, D. Rajnagar CHS Ltd.,
173,, S.V. Road, Jogeshwari (W),
Mumbai - 400 102.

Copy to:

1. The Commissioner (Appeals), Central Excise, Pune-I, F-Wing, 3rd
Floor, 41-A, ICE House, Sassoon Road, Pune - 411 001.
2. Sr. P.S. to AS (RA), Mumbai.
- ✓ 3. Guard File.
4. Spare Copy.

ATTESTED

S.R. Hirulkar
3.12.18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

