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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. 380/178/B/16-RA

Date of Issue 03.12.2018

ORDER NO. 964/2018-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 : Shri Jhonny Swapn Gomes.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. PUN-EXCUS-001-APP-121-16-17 dated 22.08.2016 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-121-16-17 dated 22.08.2016 passed by the Commissioner (Appeals-I), Central Excise & Customs, Pune.

2. Based on suspicious movements, the passenger, Shri Jhonny Swapn Gomes (herein referred to as "the respondent") was intercepted by the Customs Officers at Pune International Airport on his arrival by the Spice Jet Flight No. SG-52 from Shrijah on 28.11.2014. During the personal search of the respondent, the Customs Officers recovered six gold biscuits which were concealed in his socks/shoes. The six gold biscuits were found embossed as 'AL ETIHAD, G DUBAI UAE 10 TOLA, 999.0' on each. These all six gold biscuits were totally weighing 699.849 gms and was appraised at Rs. 18,69,972/- (Rupees Twenty One Lakh Eighty Thousand Eighty One Only). The Customs officers seized the impugned 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. The respondent stated that Shri Harish, his roommate, gave him a return ticket to India and six gold biscuits with instructions to conceal them in his socks/shoes and to deliver them to a person in Mumbai who would contact him on his reaching to Mumbai. Shri Harish promised to pay him Rs. 40,000/-.

3. After due process of the law vide Order-In-Original No. PUN-CUSTOM-000-ADC-10/2015-16/1946 dated 21.09.2015 the Original Adjudicating Authority ordered absolute confiscation of six gold biscuits totally weighing 699.849 gms valued at Rs. 18,69,972/- under Section 111 (d), (l) & m of the Customs Act, 1962 and imposed penalty of Rs. 2,00,000/- under Section 112 (a) & (b) and 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), Pune-I. The Appellate Authority vide Order in



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Appeal No. PUN-EXCUS-APP-121-16-17 dated 22.08.2016 had allowed the redemption of six gold biscuits totally weighing 699.849 gms valued at Rs. 18,69,972/- on payment of fine of Rs. 4,50,000/- in lieu of confiscation and the order in original was modified to that extent.

5. Aggrieved with the above order the applicant 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.

7. A personal hearing in the case was held on 01.10.2018, 30.10.2017 & 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 28.11.2014 and was intercepted by the Customs Officers. The personal search of the respondent resulted in the recovery of six gold biscuits of which were concealed in socks/shoes. The impugned six gold biscuits were totally weighing 699.849 gms valued at Rs. 18,69,972/- .

9. The Original Adjudicating Authority absolutely confiscated 699.849 gms of gold valued at Rs. 18,69,972/- under Section 111 (d), (l) & (m) of the Customs Act, 1962 and imposed penalty of Rs. 2,00,000/- under Section 112 (a) & (b) and Rs. 2,00,000/- under Section 114AA of the Customs Act, 1962 on the Respondent. The Appellate Authority modified the order of the adjudicating authority and allowed the the redemption of six gold biscuits totally weighing 699.849 gms valued at Rs. 18,69,972/- on payment of fine of Rs. 4,50,000/- in lieu of confiscation.



10. The Government notes that the respondent has ingeniously concealed six gold biscuits totally weighing 699.849 gms valued at Rs. 18,69,972/- 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 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 he was involved in any offences and it was a hardcore attempt on his 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. 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-121-16-17 dated 22.08.2016 to the extent that the redemption fine imposed is increased from Rs. 4,50,000/- 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. 1,50,000/- (Rupees One Lakh Fifty 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 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. ⁹⁶⁴/2018-CUS (WZ) /ASRA/MUMBAI DATED 27-11-2018

To,

- The Commissioner of Customs,
ICE House, 41/A, Sassoon Road, Pune - 411 001.



ATTESTED

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S.R. Hirulkar
30.12.18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

380/178/B/16-RA

Shri Jhonny Swapn Gomes.
Room No. 36, Bhagwati Chawl,
Dayaldas Road, Vile Parle (E),
Mumbai - 400 057.

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.

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