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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. 380/176/B/16-RA

Date of Issue 03.12.2018

ORDER NO. 965/2018-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 Ashfaaq Ahmed Ansari.

Subject : Revision Application filed, under Section 129DD
of the Customs Act, 1962 against the Order-
in-Appeal No. PUN-EXCUS-001-APP-111-16-17
dated 16.08.2015 passed by the Commissioner of
Customs (Appeals), 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-111-16-17 dated 16.08.2015 passed by the Commissioner of Customs (Appeals), Pune-I.

2. Based on suspicion, the passenger, Shri Ashfaaq Ahmed Ansari (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 Sharjah on 02.11.2014. During the personal search of the respondent, the Customs Officers recovered seven gold biscuits which were concealed in his both socks. The seven gold biscuits were found embossed as 'AL ETIHAD, G DUBAI UAE 10 TOLA, 999.0' on each. These all seven gold biscuits were totally weighing 816.510 gms and was appraised at Rs. 21,80,081/- (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 Khaleel, a resident of Hyderabad met him at Bandstand, Mumbai and offered him a job in Sharjah with good salary. However, he did not get job and had to return to Mumbai. Shri Khaleel give him a return ticket to India and seven gold biscuits with instructions to conceal them in his socks and to deliver them to a person in Mumbai who would contact him on his reaching to Mumbai. Shri Khaleel promised to pay him Rs. 20,000/-.

3. After due process of the law vide Order-In-Original No. PUN-CUSTOM-000-ADC-28/2015-16/688 dated 29.02.2016 the Original Adjudicating Authority ordered confiscation of seven gold biscuits totally weighing 816.510 gms valued at Rs. 21,80,081/- under Section 111 (d) and (l) of the Customs Act, 1962 and an option was given to the respondent to redeem the gold on payment of a fine of Rs. 4,50,000/- under Section 125(1) alongwith duty under Section 125(2) of the Customs Act, 1962. The Adjudicating Authority also imposed penalty



of Rs. 2,25,000/- under Section 112 (a) & (b) and Rs. 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 seven gold biscuits totally weighing 816.510 gms valued at Rs. 21,80,081/-. The Appellate Authority vide Order-In-Appeal No. PUN-EXCUS-APP-111-16-17 dated 16.08.2016 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 requested 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 02.11.2014 and was intercepted by the Customs Officers. The personal search of the respondent resulted in the recovery of seven gold biscuits of which were concealed in socks. The impugned seven gold biscuits were totally weighing 816.510 gms valued at Rs. 21,80,081/- .

9. The Original Adjudicating Authority absolutely confiscated 816.510 gms of gold valued at Rs. 21,80,081/- 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. 4,50,000/- under Section 125(1) alongwith duty under Section 125(2) of the Customs Act, 1962. The Adjudicating Authority also imposed penalty of Rs.



2,25,000/- under Section 112 (a) & (b) and Rs. 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 seven gold biscuits totally weighing 816.510 gms valued at Rs. 21,80,081/- in his both socks 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 has to be reduced.



12. In the instant case, the Government finds that the penalty of Rs. 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. 25,000/- 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-111-16-17 dated 16.08.2016 to the extent that the redemption fine imposed is increased from Rs. 4,50,000/- to Rs. 8,00,000/- (Rupees Eight Lakh Only) and the penalty imposed under Section 112 of Customs Act, 1962 is reduced from Rs. 2,25,000/- to Rs. 2,00,000/- (Rupees Two Lakh Only). However, the penalty of Rs. 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 and order in appeal is modified to that extent detailed supra.

15. So, ordered.

Ashok Kumar Mehta
27.11.18

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

ORDER No. ⁹⁶⁵/2018-CUS (WZ) /ASRA/MUMBAI DATED 27-11-2018



ATTESTED

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

To,

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

Shri Ashfaaq Ahmed Ansari,
Room No. 214, Squatters CLY Colony,
Chincholi Gate, Malad (E), Mumbai - 400 097.

Copy to:

1. The Commissioner (Appeals-I), Central Excise, Pune, 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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