

373/103/B/17-RA
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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.373/103/B/17-RA/913

Date of Issue 24/01/2018

ORDER NO. 01/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 23.01.2018 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 : Shri. Illikal Thodi Baiju.

Respondent : Commissioner of Customs (Appeals), Cochin.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 01/2017 dated 20.04.2014 passed by the Commissioner of Customs (Appeals) Cochin.



ORDER

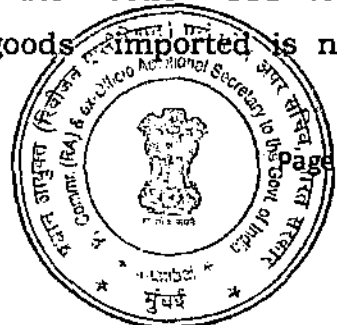
This revision application has been filed by Shri. Illikal Thodi Baiju against the order no 01/2017 dated 20.04.2017 passed by the Commissioner of Customs (Appeals) Cochin.

2. The Applicant, Shri Illikal Thodi Baiju, arrived from Riyadh to Cochin and was intercepted by the officers of the Air intelligence Unit (AIU) Cochin on specific information, at the exit gate of Cochin international airport. The Applicant had not made any declaration of any dutiable goods in his declaration form. The search of his baggage revealed gold pieces and a gold chain totally weighing 509.70 grams valued at Rs. 10,02,119/- carefully concealed inside dates and a jar of Nescafe coffee powder. The adjudicating authority vide order No. 267/2016 dated 27.09.2016 ordered absolute confiscation of the impugned gold pieces and gold chain under Section 111(d), (i) (j), (l) and (m) of the Customs Act 1962, alongwith the date box and Nescafe powder jar used for concealing the gold under Section 119 of the Act *ibid*. A penalty of Rs. 1,00,000/- was imposed on the applicant under Section 112(a) of the Act.

3. Aggrieved by this order, the appellant preferred an appeal before the Commissioner of Customs (Appeals) Cochin. The Commissioner (Appeals) rejected the appeal and upheld the order of the adjudicating authority on the ground that it is a case of willful mis-declaration and outright smuggling as the Applicant had concealed the gold in the date box and Nescafe powder jar with the intention of evading customs duty, and also because he was not eligible to import gold as stipulated under Customs Notification No.12/2012 dated 17.03.2012 and Notification 26/2012 dated 18.04.2012 as amended.

4. Being aggrieved against the said Order in Appeal, the Applicant has filed this Revision Application on the following grounds ;

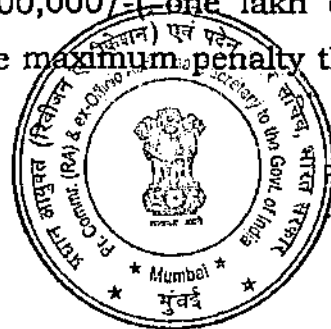
- a) that the confiscation of the goods under section 111 of the Customs Act is highly illegal as the goods imported is not a prohibited one.



Signature

- b) that the confiscation u/s 111(d), (l) and (m) are not at all applicable in this matter.
- c) that the maximum guilt that can be alleged against the revision applicant is evasion of duty, which is not a serious crime as alleged in the impugned order.
- d) that Section 125(1) of the Customs Act, provides for payment of fine in lieu of confiscation. In such circumstances, the authority ought to have been given an option to the revision applicant to pay fine in lieu of confiscation.
- e) The reason stated by the adjudicating officer for not giving the liberty to pay fine is unreasonable and arbitrary.
- f) The reliance on the decision of the Hon'ble Supreme Court in Murugesan vs. Commissioner is wrong. As the revision applicant herein has stayed abroad for more than 6 months, he can legally import gold.
- g) The adjudicating officer has relied upon the decision of the Hon'ble High Court of Kerala in Abdul Razak v. Union of India, which is not at all similar to the facts of this case. The revision applicant herein is not a carrier of any smuggler; he has brought his own savings. Hence the confiscation of the goods is highly illegal.
- h) that the Revision Applicant was not given an opportunity of being heard as provided under section 124 (c) of the Custom Act.
- i) the Revision Applicant was in possession of 18 carat gold pieces and gold chain, which is commonly used in Saudi Arabia. The assessment of the value of the articles by the Appraiser is not correct.
- j) the Revision Applicant was in possession of gold less than 1 kilogram, the goods could have been released on payment of 10% of duty.
- k) The imposition of penalty of Rs. 1,00,000/- (one lakh only) is highly excessive as u/s 112 (a) (ii) the maximum penalty that can

Ans

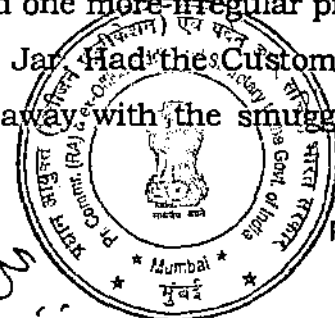


be imposed is not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is less.

5. While the application was pending adjudication before government the applicant filed a Writ Petition No. 37496 of 2017 in the High Court of Kerala, praying for directions by the Hon'ble High Court, to the Revision Authority to pass orders expeditiously after hearing him. The Hon'ble High Court of Kerala disposed of the writ petition in its order dated 22.11.2017 has interalia directed as under **" I dispose the Writ petition with a direction to the 2nd respondent to consider and pass orders on EXT. P3 revision petition within a period of three months from the date of a copy of this Judgment, after hearing the petitioner. The petitioner shall produce a copy of the writ petition together with a copy of this judgment, before the 2nd respondent, for further action"**.

6. In compliance of the Hon'ble High Court of Kerala order quoted above, a personal hearing in the matter was held on 16.01.2018, Shri Atish Kaningdhuraj, advocate attended the hearing on behalf passenger and requested for an adjournment. Accordingly, the matter was adjourned, the personal hearing was held on 17.01.2018 wherein the Advocate reiterated the submissions filed in the Revision Application and pleaded for a lenient view and that the gold be allowed on redemption fine and penalty may please be reduced.

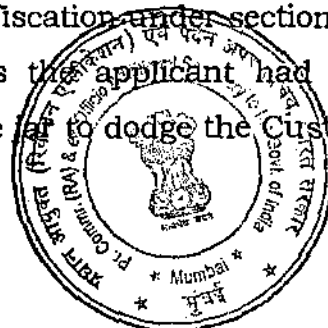
7. Government has carefully gone through the facts of the case. The case is based on specific information. The Applicant was intercepted at the exit gate as he tried to walk out of the exit gate of the Cochin International Airport. Inspection of his baggage by the officers of the Air Intelligence Unit resulted in the recovery of pieces of gold, found cleverly concealed in dates and one more irregular piece and a gold chain concealed in a Nescafe Classic Coffee Jar. Had the Custom officers not intercepted the applicant would have walked away with the smuggled gold cleverly concealed without declaring to Customs.



8. The Applicant in his statement recorded later has interalia stated that; *He belonged to a family of goldsmiths and was well aware of the difference of gold rates in Saudi Arabia and India. that he used to purchase small articles made of gold, parts of discarded premium watches, used jewelry from his customers; that the purity of those articles varied from 18 carats to 22 carats; that he purchased about 500 gams of such gold articles and a gold chain of 87 grams from the said jewellery; that he melted all the bits of gold articles in his possession and made 19 numbers of small rectangular bits and one large irregular shaped piece; that he decided to conceal the gold to avoid detection by customs; that he purchased one packet of one kg dates and concealed all 19 gold pieces inside the dates after removing the seeds and packed the contents of the dates package in its original form; that he also purchased a 200 gm bottle of Nescafe coffee powder opened its seal and concealed the larger irregular shaped gold piece and the gold chain in it.*

There is absolutely no doubt that the concealment was very intelligently and elaborately planned so as to evade Customs duty and to smuggle gold into India. The Applicant in his own statement has admitted the same. The aspect of allowing the gold on redemption fine and penalty can be considered when imports have been made in a legal manner. In this case the Applicant has blatantly tried to smuggle the gold into India in contravention of the provisions of the Customs, 1962. The ratio of the judgment of the Hon'ble High Court of Kerala in the case of Abdul Razak vs Union of India E.L.T. 2012 (275)300 Ker., is squarely applicable to this case.

9. The Applicant had not declared the said seized gold pieces before the proper officer as mandated under section 77 of the Customs Act, 1962. The said offence was committed in a premeditated and clever manner. Filing of true and correct declaration under the Customs Act, 1962 is an absolute and strict obligation of any passenger. There is no doubt about the fact that the Applicant has contravened the provisions of Customs Act, 1962. Therefore, the seized gold pieces and gold chain is liable for absolute confiscation under section 111 (d), (i), (j), (l), and (m) of the Customs Act, 1962 as the applicant had deliberately concealed the seized gold in the dates and coffee jar to dodge the Customs Officer



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and smuggle out the same without payment and payment of appropriate duty. .
The above acts have also rendered the Applicant liable for penal action under
section 112 (a) of the Customs Act, 1962. Therefore, the government holds that
the original adjudicating authority has rightly confiscated the gold absolutely and
imposed a penalty of Rs. 1,00,000/-. The Government also holds that
Commissioner (Appeals) has rightly upheld the order of the original adjudicating
authority.

10. The Government therefore finds no reason to interfere with the Order-in-
Appeal. The Appellate order 1/2017 dated 20.04.2017 passed by the
Commissioner of Customs (Appeals), Cochin is upheld as legal and proper.

11. Accordingly, the instant Revision application is dismissed. This order is
passed in compliance of the order of the Hon'ble High Court of Kerala dated
22.11.2017 in Writ Petition no. 37496 of 2017.

12. So, ordered.

Ashok Kumar Mehta
22.1.18

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

ORDER No. 01/2018-CUS (SZ) /ASRA/Mumbai

DATED 23.01.2018

To,

Shri. Ilikal Thodi Baiju,
Ilikal Thodi-House Pan Chendi(PO)
Malappuram,
Kerala-679 338.

True Copy Attested

Sankar Munda
23/1/18
SANKAR MUNDA
Asstt. Commissioner of Custom & C. Ex.

Copy to:

1. The Commissioner of Customs, Custom House, Cochin.
2. The Commissioner of Customs (Appeals), Cochin, Custom House,
Willington Island, Cochin 682 009.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

