

REGISTERED
SPEED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/71, 72 & 73/B/16-RA

3361

Date of Issue 13/12/2018

ORDER NO. ¹⁰³³⁻¹⁰³⁵ /2018-CUS (SZ)/ASRA/MUMBAI DATED 30.11.2018 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 : Shri Nagoor Gani
Shri Jalaludeen,
Shri Mohammed Rabi

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal C. Cus-I No.
145,146 & 147/2014 dated 29.02.2016 passed by the
Commissioner of Customs (Appeals-I), Chennai.

ORDER

These three revision applications have been filed by Shri Nagoor Gani, Shri Jalaludeen and Shri Mohammed Rabi (herein after referred to as the Applicants) against the order in appeal No. 145,146 & 147/2014 dated 29.02.2016 passed by the Commissioner of Customs (Appeals), Chennai. As all the Applicants have been penalized in a single order in original and a single Order in Appeal the revision applications are being disposed off together in a single order.

2. Briefly stated the facts of the case is that the officers of DRI received specific intelligence that a passenger Shri Madhusreekant Reddy would be carrying gold concealed in his checked in baggage and handing it over to the Applicants outside the Chennai International Airport on 04.03.2014. Accordingly the officers intercepted Shri Madhusreekant Reddy and seized a parcel as he was handing it over to the Applicants. The parcel contained an electrical appliance used for polishing tiles. The complete dismantling of the appliance resulted in the recovery of two pieces of gold weighing 200 gms. On further enquiry the Applicant also informed the officers that they were expecting more gold being sent in a similar manner. The Officers similarly intercepted another consignment from a passenger Shri Miasudeen Anwar and recovered another electrical appliance used for polishing tiles containing 15 pieces of gold totally weighing 595 grams. The total 794 grams of gold valued at Rs. 24,51,780/- (Rupees Twenty four Lakhs Fifty one thousand Seven hundred and Eighty) was accordingly seized by the officers .

3. The Original Adjudicating Authority vide Order-In-Original No. 317/11.09.2015 ordered absolute confiscation of the impugned gold under Section 111 (d), and (l) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, and imposed penalty of Rs. 2,00,000/-each on the Applicant and Mohammed Rabi and imposed a penalty of Rs. 10,00,000/- on Shri Jalaludeen under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the applicants filed appeals before the Commissioner (Appeals) who vide Order-In-Appeal No. 145,146 & 147/2014 dated 29.02.2016 reduced the penalty imposed on Shri Jalaludeen from Rs. 10,00,000/- to Rs.2,00,000/- without interfering into the penalties imposed on the other two Applicants lakhs rejected the appeal of the applicant.

5. The applicants have filed these Revision Applications interalia on the following grounds that;

5.1 The order of the appellate authority is contrary to the law and probabilities of the case; The Commissioner of Customs failed to note that in the absence of ingredients of offence sought to be penalized in the show cause notice, penalty is not valid in law; there is no contemporaneous conduct on part of the applicants warranting penalty; The names of the Applicants does not appear on any documents as a carrier and was not concerned in any way with the said gold pieces; the Applicants had not filed any declaration or done anything to render the gold liable for confiscation; It is not correct to say that the Applicants had colluded in the act of smuggling; There is no evidence to affirm that the Applicants have abetted or there is any mensrea in respect of the said smuggling; As there was no evidence of deliberate defiance of law penalty cannot be imposed; The penalty of Rs. 2,00,000/- imposed on each of the Applicants is arbitrary and unreasonable; The Applicants cannot be penalized on the statement of the accused; The penalty imposed was beyond the scope of the Show cause notice;

5.2 The Applicants submitted case laws in favor of their case and prayed for setting aside the Order in Appeal in its entirety, in setting in confirming the penalty of Rs. 2,00,000/- on the applicants or pass further or other orders as deem fit and proper in the facts and circumstances of the case.

6. A personal hearing in the case was scheduled in the case, the Advocate for the respondent Shri A. K Jayaraj Advocate for the Revision Applicant attended the hearing, he re-iterated the submissions filed in Revision Application and pleaded for a lenient view in the matter and the Revision Application be allowed.

7. The Government has gone through the case records it is observed that the gold was indigenously concealed in the electrical appliance used for polishing tiles and had therefore escaped detection inside the airport. The concealment was planned so as to avoid detection and evade Customs duty and smuggle the gold into India. This is not a simple case of mis-declaration. In this case the Applicants had consciously hatched a plan alongwith their overseas associates to smuggle gold into the country. They were aware that the gold would be concealed in the appliance handed over to them by the person who had brought it. Government also notes that if the Applicants were not intercepted and interrogated the second consignment would not have been detected. Therefore all the three Applicants have abetted in crime and have played their roles as receivers in the larger plan of smuggling the gold into India, in contravention of the provisions of the Customs, 1962. The said offence was committed in a premeditated and in a well planned operation and clearly indicates mensrea. The Applicants in their statements recorded by the DRI authorities have accepted their role in the modus

operandi and have also revealed the manner in which the smuggling plan was hatched. The retraction of their statements have been made on legal advice to extricate themselves from the offence and therefore cannot rescue them from the penalties imposed.

8. The above acts have therefore rendered all the Applicants liable for penal action under section 112 (a) of the Customs Act, 1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed a penalties on the Applicants. The Government also holds that Commissioner (Appeals) has rightly upheld the penalties imposed on the Applicant and Shri Mohammed Rabi and reduced the penalty on Shri Jalaludeen from Rs. 10,00,000/- (Rupees Ten lakhs to Rs. 2,00,000/- (Rupees Two lakhs).

9. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C. Cus. No. 145,146 & 147/2014 dated 29.02.2016 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

10. The impugned Revision Applications are dismissed.

11. So ordered.

(Signature)
20.11.18

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

1033-1035
ORDER No. /2018-CUS (SZ) /ASRA/MUMBAI

DATED 30.11.2018

To,

Shri Nagoor Gani
Shri Jalaludeen,
Shri Mohammed Rabi
c/o M/s A.K. Jayaraj, Advocate
New No. 3, Old No. 2, 1st Floor,
Thambusamy Road,
Kilpauk, Chennai 600 010.

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. The Commissioner of Customs & Central Excise (Appeals), Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
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ORDER NO. ¹⁰⁴⁰ /2018-CUS (SZ) / ASRA / MUMBAI/ DATED 30.11.2018 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 : Shri Abdul Nasser Kolavayal

Respondent : Commissioner of Customs (Airport) Cochin.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. COC-CUSTOM-000-APP-333/2015-16 dated 31.12.2015 passed by the Commissioner of Customs (Appeals), Cochin.



ORDER

This revision application has been filed by Shri Abdul Nasser Kolavayal (herein referred to as Applicant) against the Order in Appeal No. COC-CUSTM-OOO-APP-333/2015-16 dated 31.12.2015 passed by the Commissioner of Customs (Appeals), Cochin.

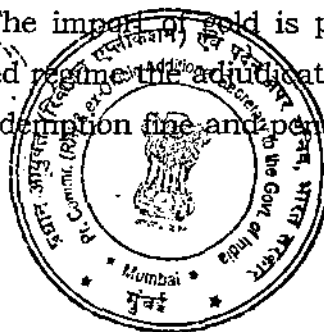
2. On 13.06.2013 the Applicant arrived at the Cochin Airport, he was intercepted as he was walking through the exit. Examination of his baggage and person resulted in the recovery of 2 gold bars on one kilogram each totally valued at Rs. 52,18,830/- (Rupees Fifty Two lakhs Eighteen thousand Eight hundred and Thirty). The gold was recovered from specially made pockets on the inside of his trousers.

3. After due process of the law vide Order-In-Original No. 06/2014 dated 02.05.2014 the Original Adjudicating Authority ordered absolute confiscation of the gold and cigarettes under Section 111 (d) (i) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 10,00,000/- on the Applicant under Section 112 (a) of the Customs Act, 1962 on the Applicant.

4. Aggrieved by the said order, the Applicant, filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. COC-CUSTM-OOO-APP-333/2015-16 dated 31.12.2015 rejected the appeal of the Applicant.

5. Aggrieved with the above order the Applicant, has filed this revision application inter alia on the grounds that;

5.1 The order of the appellate authority is oppose to law, facts and circumstances of the case; The adjudication authority ought not to have confiscated the gold bars and the Commissioner of Customs (Appeals) has acted in a harsh and tyrannical manner against the settled principles of law; The absolute confiscation of the gold has resulted in a serious miscarriage of justice and is contrary to law and against the natural principles of justice; The import of gold is permitted and gold is not prohibited; In liberalized regime the adjudication authority should have released the gold on redemption fine and penalty; absolute confiscation



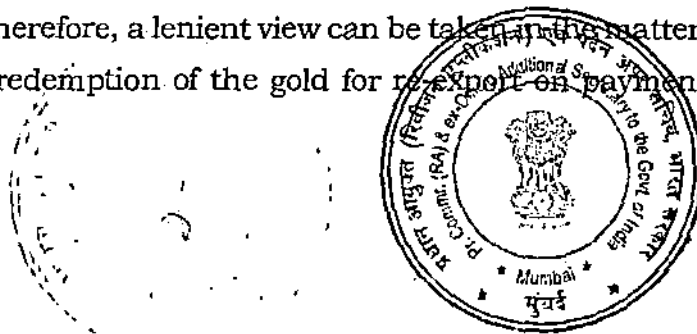
is unwarranted and as per section 125 of the Customs Act is very clear on release of the gold on redemption fine and penalty; The Hon'ble Supreme Court has held in various cases that the enactment of the Customs Act, 1962 is to generate revenue and not for punishment; The allegations made by the adjudication authority are based on assumptions and presumptions; The investigations made at the residence of the Applicant confirmed that the gold belonged to the Applicant.

5.2 The Applicant submitted case laws in favor of his case and prayed for setting aside the absolute confiscation of the gold and release the gold on reasonable redemption fine and penalty in the interest of justice.

6. A personal hearing in the case was scheduled in the case, the Advocate for the Applicant Shri K.P.A. Shukoor, Advocate for the Revision Applicant attended the hearing, he re-iterated the submissions filed in Revision Application and pleaded that the order in Appeal be set aside and a lenient view in the matter may be taken and the gold be released on redemption fine and penalty.

7. However, the facts of the case reveal that the gold was recovered from specially stitched pockets on the inside of his trousers the though concealed cannot be termed as ingeniously concealed. Import of gold is restricted not prohibited. The Applicant has no past history of such misdemeanors. The original adjudicating order notes that among the documents recovered from his possession, was a cash bill of UAE dirhams towards purchase of 2 nos of Kilo bar therefore the ownership of the gold is not disputed. Thus, mere non-submission of the declaration cannot be held against the Applicant and dispossess him of the gold.

8. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. In view of the above facts, the Government is of the opinion that absolute confiscation of the gold is harsh and unjustified and therefore, a lenient view can be taken in the matter. The Applicant has pleaded for redemption of the gold for re-export on payment of redemption



fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal is therefore liable to be set aside.

9. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 2 gold bars of one kilogram each weighing 2000 grams totally valued at Rs. 52,18,830/- (Rupees Fifty Two lakhs Eighteen thousand Eight hundred and Thirty) is allowed to be redeemed for re-export on payment of redemption fine of Rs. 25,00,000/- (Rupees Twenty five lakhs) under section 125 of the Customs Act, 1962. Government observes that the facts of the case justify reduction in the penalty imposed. The penalty of Rs. 10,00,000/- (Rupees Ten lakhs) is reduced to Rs. 8,00,000/- (Rupees Eight lakhs) under section 112(a) of the Customs Act,1962.

10. Revision application is allowed on above terms.

11. So, ordered.

Ashok Kumar Mehta
30.11.18

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

ORDER No. ¹⁰⁴⁰ /2018-CUS (SZ) /ASRA/Mumbai DATED 30.11.2018

To,

Shri Abdul Nasser Kolavayal
c/o K. P. A. Shukoor, Advocate
Krishnaprasad building,
K. S. Road,
Hampankatta, Mangalore- 575 001.

Copy to:

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