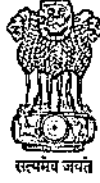


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GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,

Mumbai-400 005

F.No. 373/160/B/16-RA

Date of Issue 13/12/2018

ORDER NO. ¹⁰⁴⁵ /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 Madappalli Mammad Ismail

Respondent : Commissioner of Customs (Airport) Mangalore.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 366/2016 dated 21.04.2016 passed by the Commissioner of Customs (Appeals), Bangalore.



ORDER

This revision application has been filed by Shri Mohammed Aslam Kadavath Ahmed (herein referred to as Applicant) against the Order in Appeal No. 366/2016 dated 21.04.2016 passed by the Commissioner of Customs (Appeals), Bangalore.

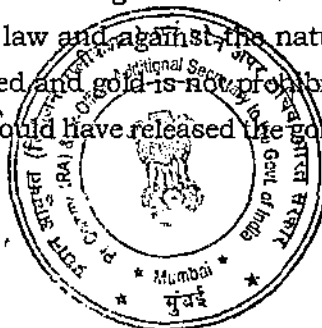
2. On 13.10.2014 the officers of Customs rummaging a Jet Airways Aircraft arrived from Dubai recovered a paper packet concealing one kilogram gold bar concealed in the life jacket cover, beneath seat 36A. enquiries ascertained that the said seat as well as the adjoining seats were not allocated to anybody, and the said seat were vacant during the flight from Dubai to Mangalore. As the flight was proceeding to Mumbai on its domestic route the officers concealed the gold brick in the life jacket cover, and kept a vigil on passengers who arrived to board the said seat. The Applicant who hurriedly occupied the said seat and retrieved the gold bar was intercepted by the officers. In his statement the Applicant informed that he had boarded the same flight in Dubai and after landing he completed the immigration formalities and customs clearance and again boarded the same flight for Mumbai.

3. After due process of the law vide Order-In-Original No. 24/2015 JC dated 16.06.2015 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. 3,00,000/- on the Applicant under Section 112 (a) of the Customs Act,1962 on the Applicant. A penalty of Rs. 2,00,000/- was also imposed under Section 114AA 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. 366/2016 dated 21.04.2016 rejected the appeal of the Applicant.

5. Aggrieved with the above order the Applicant, has filed this revision application interalia 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 and the Appellate authority has lost sight of the important position of law; The Applicant has claimed the gold found in his possession and no other person has claimed the gold; 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



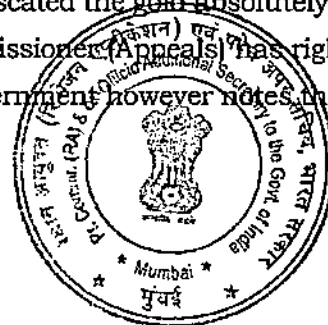
penalty or allowed him to re-export the gold; absolute confiscation is unwarranted and as per section 125 of the Customs Act is very clear on release of the gold on redemption fine and penalty; The Hon'ble Supreme Court has held in various cases that the enactment of the Customs Act, 1962 is to generate revenue and not for punishment; The allegations made by the adjudication authority are based on assumptions and presumptions.

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 on 19.11.2018 in the case, the Advocate for the respondent 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 for a lenient view in the matter and the gold be released on redemption fine and penalty.

7. The Government has gone through the case records it is observed that the one kilogram gold bar was concealed in the life jacket cover, beneath a seat in the Aircraft scheduled to fly from Dubai to Mangalore by the Applicant. As he was aware that the same flight was continuing towards Mumbai, he therefore again boarded the flight for its domestic journey after he completed the immigration formalities and customs clearance at Mangalore. The plan was to claim that he was a domestic passenger as that would not entail him to declare the gold and to evade customs duty. He was however intercepted when he had retrieved the gold bar concealed by him below the seat. The entire modus operandi was very well planned and evade Customs duty and smuggle the gold into India. This is not a simple case of mis-declaration. In this case the Applicant has blatantly tried to smuggle the gold into India in contravention of the provisions of the Customs, 1962. The release on concessional rate of duty also cannot be entertained as the Applicant has not declared the gold as required under Section 77 of the Customs Act, 1962. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and if he was not intercepted, the Applicant would have taken out the gold without payment of customs duty.

8. The above acts have therefore rendered the Applicant 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 penalty. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority. Government however notes that once penalty



has been imposed under Section 112(a), there is no necessity for imposing a separate penalty under Section 114AA of the same Act. The penalty under 114AA of the Customs Act, 1962 therefore needs to be set aside.

9. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order No. 366/2016 dated 21.04.2016 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper. However, the penalty of Rs. 2,00,000/- (Rupees Two lakhs) imposed under section 114AA of the Customs Act, 1962 in the Order-In-Original issued by the Original Adjudicating Authority has been incorrectly imposed, the same is therefore set aside.

10. The impugned Revision Application is disposed off on terms mentioned supra.

11. So, ordered.

Ashok Kumar Mehta
20.11.18

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

ORDER No. ¹⁰⁴³ /2018-CUS (SZ) /ASRA/MUMBAI

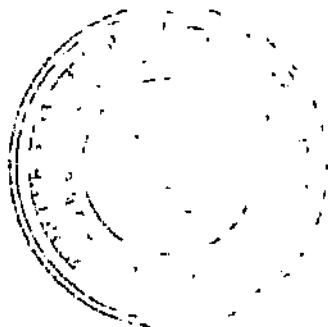
DATED 30.11.2018

To,

Shri Madappalli Mammad Ismail
c/o K. P. A. Shukoor, Advocate
Krishnaprasad building,
K. S. Road,
Hampankatta, Mangalore- 575 001.

Copy to:

1. The Commissioner of Customs, (Airport), Mangalore
2. The Commissioner of Customs (Appeals-1), Custom House, Bangalore.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.



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F. No. 373/75/B/16-RA / 2219

Date of Issue 03/12/2018

ORDER NO. 974 /2018-CUS (SZ) / ASRA / MUMBAI DATED
29.11.2018 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 Venkata Rangam Maddali

Respondent : The Principal Commissioner of Customs,
Chennai.

Subject : Revision Application filed, under Section
129DD of the Customs Act, 1962 against the
Order-in-Appeal No. 154/2016 dated
24.03.2016 passed by the Commissioner of
Customs (Appeals 1), Chennai.



ORDER

This revision application has been filed by Shri Venkata Rangam Maddali (herein referred to as Applicant) against the Order in Appeal No 154/2016 dated 24.03.2016 passed by the Commissioner of Customs (Appeals 1), Chennai.

2. Shri Venkata Rangam Maddali (herein referred to as "the applicant") was intercepted by the Customs Officers at the Anna International Airport, Chennai on his arrival by Air Aisa Flight No. AK-11 from Kuala Lumpur on 11.10.2015. The respondent had not declared any value in Customs Declaration Form. On enquiry as to whether he possessed any dutiable goods, the respondent replied in negative. During the personal search of the applicant, the Customs Officers recovered four semi finished gold chains totally weighing 354.5 gms from inner pocket of pant worn by him. The four gold chains so recovered were valued at Rs.9,38,205/- (Rupees Nine Lakh Thirty Eight Thousand Two Hundred Five Only) . On enquiry, the respondent informed that said four gold chains were given to him by an unknown person outside Kuala Lumpur Airport before his travel to Chennai to be handed over to another person at Chennai Airport. The Customs officers seized said four gold chains under reasonable belief that the applicant had attempted to smuggle them in India.

3. The Original Adjudicating Authority vide Order-In-Original No. 376/2015-16 -AIRPORT dated 30.11.2015 ordered absolute confiscation of four semi finished gold chains totally weighing 354.5 gms valued at Rs. 9,38,205/- under Section 111 (d) & (l) of the Customs Act, 1962. The Adjudicating Authority also imposed penalty of Rs. 90,000/- 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 of Customs (Appeals-I), Chennai. The appellate authority upheld the original order and rejected the appeal.



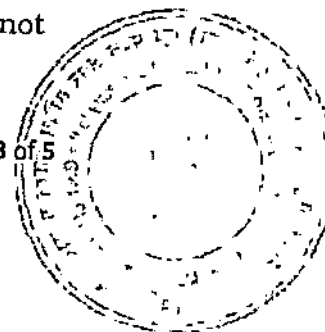
5. Aggrieved with the above order the applicant has filed this revision application on the grounds that;

- 5.1 the applicant had submitted before the adjudicating authority that his son was employed in Malaysia and the gold chains brought by the applicant were for the applicant's wife and daughters as a present from his son.
- 5.2 the gold chains were found in his pocket and not concealed.
- 5.3 the gold is not prohibited commodity and hence not liable for absolute confiscation.

6. A personal hearing in the case was fixed on 15.11.2018 and the same was attended by Shri B. Satish Sundar & Shri V. Santaram, Advocates on behalf of the applicant. The advocates submitted brief written note during personal hearing which is taken on record. They also pleaded that order in appeal be set aside and gold be redeemed for re-export on payment of fine and penalty.

7. The Government has gone through the facts of the case. The applicant was walking out of green channel; he was intercepted by the Customs Officers. The applicant had filled up the column in Customs Declaration Form as NIL. On subsequent search of the applicant resulted in recovery of impugned four semi finished gold chains totally weighing 354.5 gms valued at Rs. 9,38,205/-. Since the applicant did not declare the impugned gold as required under Section 77 of the Customs Act, 1962, the confiscation of the same is justified in the instant case.

8. However, the facts of the case state that the impugned gold is claimed by the applicant and there is no other claimant. Thus the Government observes that the ownership of gold is not disputed. The gold chains were recovered on person from the pockets of the pant worn by the applicant and not ingeniously concealed. Under the circumstances absolute confiscation of the impugned gold chains appears to be harsh option. There is no reference of any previous offence against the applicant. Thus mere non submission of declaration cannot be held against the applicant.

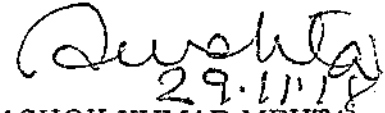


9. There are catena of judgments which align with the view that the discretionary powers vested with the lower authorities under Section 125(1) of the Customs Act, 1962 have to be exercised. Under the circumstances, Government is of the opinion that a lenient view can be taken in the matter. The applicant has pleaded for re-export of the gold and the Government is inclined to accept the plea. The order of absolute confiscation of the gold in the impugned Order in Appeal therefore needs to be modified and the confiscate gold is liable to be allowed for re-export on payment of redemption fine and the penalty imposed could be reduced to meet the ends of justice.

10. Taking into consideration the forgoing discussion, Government allows redemption of the confiscated gold for re-export in lieu of fine. The four semi finished gold chains totally weighing 354.5 gms valued at Rs. 9,38,205/- (Rupees Nine Lakh Thirty Eight Thousand Two Hundred Five Only) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 3,50,000/- (Rupees Three Lakh Fifty Thousand Only) under Section 125 of the Customs Act, 1962. The penalty imposed under Section 112(a) of the Customs Act, 1962 is reduced from Rs. 90,000/- to Rs. 70,000/- (Rupees Seventy Thousand Only).

11. The impugned Order in Appeal stands modified to that extent. Revision is partly allowed on above terms.

12. So, ordered.



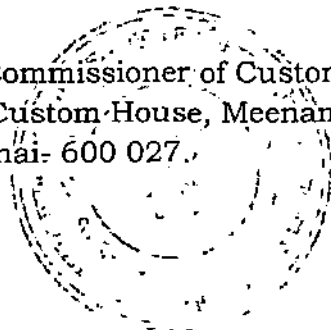
(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 974/2018-CUS (SZ) /ASRA/MUMBAI DATED 29.11.2018

To,

1. The Commissioner of Customs, Chennai-I,
New Custom House, Meenambakkam,
Chennai- 600 027.



2. Shri Venkata Rangam Moddali,
No. 4-26, Peddha Bazaar, Palukuru,
Andhra Pradesh – 523 105.

Copy to:

1. The Commissioner of Customs (Appeals-I), 60, Rajaji Salai,
Customs House, Chennai- 600 001.
2. M/s Aum Associates, Advocates,
Suite No. 25, 1st floor, R.R. Complex No.1,
Murthy Lane, Rattan Bazaar,
Chennai – 600 003.
3. Sr. P.S. to AS (RA), Mumbai.
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