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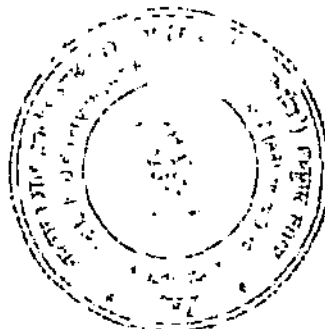
Date of Issue 13/12/2018

ORDER NO. ¹⁰⁴⁴ /2018-CUS (S Z) / 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 Mohammed Aslam Kadavath Ahmed

Respondent : Commissioner of Customs (Airport) Mangalore.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 290/2016 dated 31.03.2016 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. 290/2016 dated 31.03.2016 passed by the Commissioner of Customs (Appeals), Bangalore.

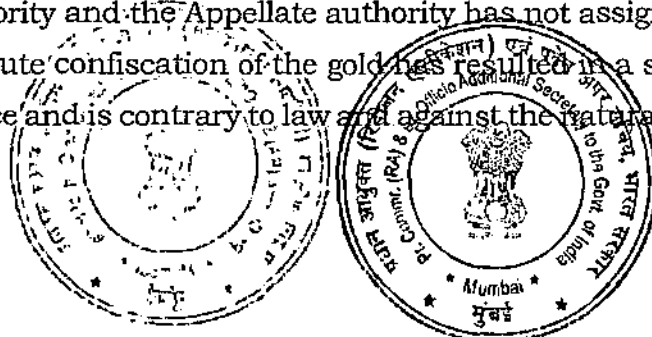
2. On 16.07.2013 the Applicant arrived at the Mangalore Airport, on specific information he was intercepted as he was walking through the metal detector. Examination of his baggage and person resulted in the recovery of gold biscuits weighing 582 grams valued at Rs. 15,59,760/- (Rupees Fifteen lakhs Fifty nine thousand Seven hundred and Sixty). The gold biscuits were ingeniously concealed in the condensers in the circuit board of the Sony Bravia TV brought by the Applicant.

3. After due process of the law vide Order-In-Original No. 30/2014 ADC dated 30.06.2014 the Original Adjudicating Authority ordered absolute confiscation of the gold and cigarettes under Section 111 (d) (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. 1,00,000/- was also imposed under Section 114AA of the Customs Act, 1962.

4. Aggrieved by the said order, the Applicant, filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 290/2016 dated 31.03.2016 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 and the Appellate authority has lost sight of the important position of law; The personal hearing was not conducted properly and the findings of the adjudication authority and the Appellate authority has not assigned any reasons; 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;



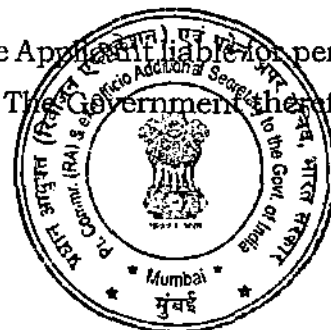
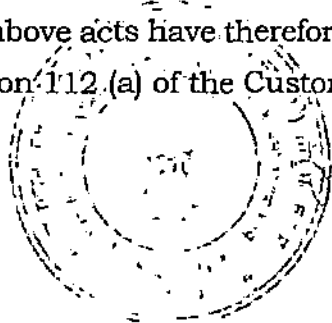
The import of gold is permitted and gold is not prohibited; In liberalized regime the adjudication authority should have released the gold on redemption fine and penalty; absolute confiscation is unwarranted and as per section 125 of the Customs Act is very clear on release of the gold on redemption 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 for a lenient view in the matter and the gold be released on on redemption fine and penalty.

7. Government has gone through the facts of the case, it is observed that the gold were ingeniously concealed in the condensers in the circuit board of the Sony Bravia TV brought by the Applicant. 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 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 that the Applicant had no intention of declaring the gold to the authorities and if he was not intercepted before the exit, 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 holds that when penalty is imposed under section 112 no penalty is required to be imposed under section 114AA of the Customs Act, 1962 for the same offence. The penalty imposed under section 114AA of the Customs Act, 1962 therefore is required to be set aside.

9. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order No. 290/2016 dated 31.03.2016 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper. The penalty of Rs. 1,00,000/- (Rupees One lakh) imposed under section 114AA of the Customs Act, 1962 is set aside.

10. Revision Application is partly allowed on the 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. ¹⁰⁴⁴ /2018-CUS (SZ) /ASRA/MUMBAI

DATED 30.11.2018.

To,

Shri Mohammed Aslam Kadavath Ahmed
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-I), Custom House, Bangalore.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

