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GOVERNMENT OF INDIA
MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)
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Mumbai-400 005

F.No. 373/132/B/16-RA

1046
/ 2806

Date of Issue 13/12/2018

ORDER NO. ¹⁰⁴⁶ /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 Nesif Kowal

Respondent: Commissioner of Customs (Airport) Mangalore.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
287/2016 dated 22.03.2016 passed by the
Commissioner of Customs (Appeals), Bangalore.



ORDER

This revision application has been filed by Shri Nesif Kowal (herein referred to as Applicant) against the Order in Appeal No. 287/2016 dated 22.03.2016 passed by the Commissioner of Customs (Appeals), Bangalore.

2. On 23.03.2014 the Applicant arrived at the Mangalore Airport, he was intercepted as he was walking through the metal detector. Examination of his baggage and person resulted in the recovery of 18 cartons said to contain vegetable dry fruits held together with gold staples pins disguised with silver color. The Officers recovered 288 staple pins weighing 577 grams valued at Rs. 17,19,460/- (Rupees Seventeen lakhs Nineteen thousand Four hundred and Sixty).

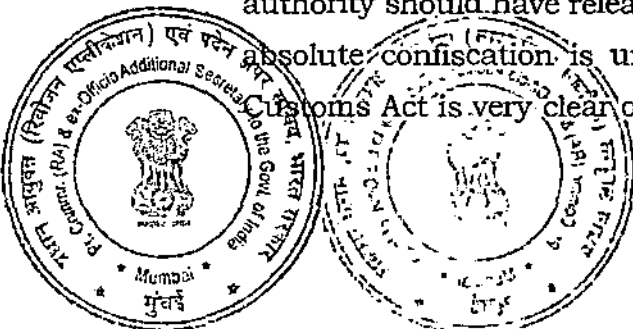
3. After due process of the law vide Order-In-Original No. 46/2014 JC dated 19.09.2014 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (i) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 1,72,000/- on the Applicant under Section 112 (a) of the Customs Act, 1962 on the Applicant. A penalty of Rs. 90,000/- 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. 287/2016 dated 22.03.2016 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 is contrary to the 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



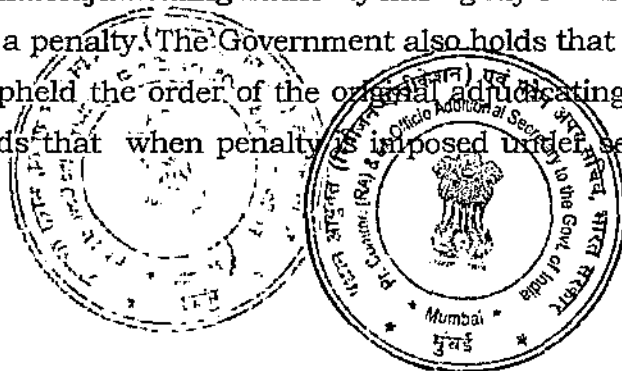
penalty; The Hon'ble Supreme Court has held in various cases that the enactment of the Customs Act, 1962 is to generate revenue and not for punishment; The allegations made by the adjudication authority are based on assumptions and presumptions; The investigations made at the residence of the Applicant 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 for a lenient view in the matter and the gold be released on redemption fine and penalty.

7. Government has gone through the facts of the case, it is observed that the gold were ingeniously coloured silver and disguised as staple pins and used as staple pins to hold cartons. The plan was to mislead the Customs authorities into concluding that the gold were authentic staple pins 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 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. 90,000/- (Rupees Ninety thousand) 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.

(Signature)
30.11.18

(ASHOK KUMAR MEHTA)

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

ORDER No. ¹⁰⁴⁶ /2018-CUS (SZ) /ASRA/MUMBAI
~~11.2018~~

DATED 30.11.2018

To,

Shri Nesif Kowal
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.

