



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/178/B/16-RA

2022

Date of Issue : 10.07.2022

ORDER NO. 209/2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED 15.07.2022
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS
ACT, 1962.

(i). F.No. 373/178/B/16-RA

Applicant : Shri. Sajeer Mullapuram

Respondent : Commissioner of Customs, Cochin International Airport
Ltd, Nemdumbassery, Cochin - Cochin, Kerala - 682 009.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal
No. 38/2016-17 dated 20.05.2016 [(DOI : 23.05.2016)
(F.No. C27/259/Air/2015 AU CUS)] passed by the
Commissioner of Customs (Appeals), Custom House,
Cochin - 9.

ORDER

This revision application has been filed by Shri. Sajeer Mullapuram (hereinafter referred to as the Applicant) against the Order-In-Appeal No. 38/2016-17 dated 20.05.2016 [(DOI : 23.05.2016) (F.No. C27/259/Air/2015 AU CUS)] passed by the Commissioner of Customs (Appeals), Custom House, Cochin – 9.

2. The applicant who had arrived at the Cochin International Airport on 21.09.2014 from Sharjah onboard Air Arabia Flight No. G9-0427 and had opted for the green channel was intercepted by the Customs Officers on the basis of a suspicious image seen in his baggage during screening. Examination of his trolley bag and two checked in baggage was carried out. 7 pieces of rhodium plated metal wires concealed as centre beading were found and upon scratching the wire revealed the underlying yellow coloured metal. Further, 40 nos of metal pieces moulded in the shape of trouser hooks and bars were also found. The 7 pieces of metal wires and 40 nos of moulded metal pieces in the shape of trouser hooks and bars were all assayed which confirmed that same were made of 24 carats gold, weighing 998 grams and valued at Rs. 24,35,210/- (International Value). The applicant revealed that he had carried the same for monetary consideration.

3. The Original Adjudicating Authority (OAA) viz, Addl. Commissioner of Customs, Cochin – 682 009 vide Order-In-Original No. 46/2015 dated 17.09.2015 [(DOI : 28.09.2015 ; F.No. S-14/109/2014/AIR-CUS-AIU- A)] ordered for the absolute confiscation of the 7 pieces of gold wires and 40 nos of moulded gold pieces in the shape of trouser hooks / bars, totally weighing 998 grams of gold valued at Rs. 24,35,210/- under Section 111 (d), (i), (l), and (m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A penalty of Rs. 2,00,000/- was imposed on the applicant under Section 112(a) & (b) of the Customs Act, 1962.

4. Aggrieved by this order, the applicant filed an appeal with the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Cochin – 9 who vide Order-In-Appeal no. 38/2016-17 dated 20.05.2016 [(DOI : 23.05.2016) (F.No. C27/259/Air/2015 AU CUS)], rejected the appeal.

5. Aggrieved with the order of the Appellate authority, the Applicant filed this revision application inter alia on the grounds that;

- 5.01. the order of the appellate authority was not legal / proper and was bad in the eyes of natural justice.
- 5.02. that the OAA and AA had failed to note that the applicant had never claimed the gold valued at Rs.24 lakhs.
- 5.03. that the show cause notice dtd. 11/3/2015 had not been served properly or communicated to the applicant.
- 5.04. that the applicant had not got an opportunity to establish his innocence before the OAA and the AA.
- 5.05. that at the first opportunity, the applicant had retracted his incriminating statement given on the date of his arrest
- 5.06. that the Customs Department had not done any inquiry or investigation pursuant to the alleged disclosure made by applicant which indicates that the statement was fabricated.
- 5.07. that the applicant had not objected or challenged the confiscation of the gold
- 5.08. that the trolley bag containing the rhodium plated gold and moulded into hooks of pant had been entrusted to the applicant by an acquaintance abroad.
- 5.09. that the applicant is poor family and the penalty imposed was highly excessive and exorbitant.
- 5.10. that the Appellate Authority had not considered the retraction letter

Under the circumstances, the applicant prayed that the Order-In-Original No.46/2015 in O.S. No.149/2014, dtd. 17/9/2015 passed by the Additional Commissioner of Customs, Cochin and the Order-in-Appeal No.38/16, dtd. 20/5/2016 passed by the Commissioner of Customs (Appeals), Cochin-9 imposing a personal penalty of Rs.2,00,000/- may be set aside in the interest of justice and any order as deemed fit may be issued.

6. Personal hearings in the case was scheduled for 14.11.2018. After the change of the revisionary authority, personal hearing through the online video conferencing mode were scheduled for 20.08.2021 / 27.08.2021, 26.10.2021 / 09.11.2021, 08.12.2021, 11.01.2022, 23.03.2022 / 30.03.2022. Shri. Manu

Tom, Advocate appeared online and reiterated his earlier submissions. He requested for reduction in the penalty on applicant as he carried the bag given to him in good faith and the applicant is very poor person. He further submitted that applicant is not a habitual offender and has unwittingly become part of this case.

7. Government has gone through the facts of both the cases. Government notes that the applicant had been intercepted after he had opted for the green channel without declaring the dutiable goods in his possession. The gold of high purity had been converted into wires and trouser hooks / rods and had thereafter been coated with rhodium to evade detection by Customs. A very ingenious method to smuggle in gold and evade detection and payment of Customs duty had been adopted. Also, the quantum of gold and its purity indicated that the same was for commercial use. The gold in the form of wires and a rod had been discovered only when the baggage of the applicant was thoroughly checked in the screening machine. The Applicant did not declare the gold as required under Section 77 of the Customs Act, 1962. The quantity of gold recovered is quite large, of commercial quantity and in the form of wires / rod and it was an ingenious concealment designed to avoid detection. The confiscation of the gold is therefore justified and the applicant had rendered himself liable for penal action.

8. Considering the ingenious manner adopted in converting the gold into wires, trouser hooks & bars and coating the same with rhodium to avoid detection and payment of Customs duty, the Government notes that the OAA has passed a legal and proper order for the absolute confiscation of the gold which has been upheld by the AA.

9. Government notes that the applicant is only contesting the quantum of penalty on the grounds of penury. Government notes that the applicant has not challenged the confiscation of the gold recovered from him and has stated

that he had unwittingly carried the gold wires and hooks / bars on the request of an acquaintance and for a monetary consideration. The gold had been ingeniously converted into wires which were coated with rhodium to evade detection by Customs and to evade payment of Customs duty. Government notes that the applicant had aided and abetted in the ingenious smuggling of gold and the actions of the applicant had rendered him liable to penalty.

10. Government notes that since the confiscation of gold has not been challenged by the applicant, the issue that remains is the quantum of penalty. Therefore, the issue of retraction of statement made by the applicant in his averments is infructuous at this stage.

11. Government notes that the penalty has been appropriately imposed on the applicant for aiding and abetting in the smuggling activity. However, on grounds of penury, the applicant has pleaded for reduction of the quantum of penalty. Customs Act does not stipulate any ground of penury for reducing the penalty under Section 112(a) and (b). Penalty imposed is commensurate to gravity of offence.

12. The revision application is disposed of on the above terms.


(SHRAWAN KUMAR)

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

ORDER No. 209/2022-CUS (SZ) /ASRA/

DATED 07.07.2022

To,

1. Shri. Sajeer Mullapuram, S/o. Shri. Assainar Thenisseri Kandy, Sakeena Manzil, PO Bavode, Mukkilpeedika, Kannur, Kerala - 670 622.
2. Commissioner of Customs, Cochin International Airport Ltd, Nemdumbassery, Cochin - Cochin, Kerala - 682 009.
3. Commissioner of Customs, Customs House, Willingdon Island, Cochin, Kerala - 682 009

Copy to:

1. Shri. Manu Tom Cheruvally, Advocate, C-7, 1st Floor, NJK Triveni Retd, Chief Justice Koshy Avenue Road, Near Woodlands Junction, M.G. Road, Cochin - 682 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. File copy,
4. Notice Board.