

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. 373/79/B/16-RA/236

Date of Issue 03/05/2018.

ORDER NO 235/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 27.04.2018 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 Abul Hassan Irshath Ahamed

Respondent : Commissioner of Customs (Airport), Bengaluru

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 181/2016 dated 15.03.2016 passed by the Commissioner of Customs (Appeals) Bengaluru



ORDER

This revision application has been filed by Shri Abul Hassan Irshath Ahamed against the Order in Appeal no 181/2016 dated 15.03.2016 passed by the Commissioner of Customs Excise (Appeals) Bengaluru

2. Briefly stated facts of the case are that the applicant arrived from Singapore on 23.06.2013. He was intercepted as he was walking out through the Green Channel, he did not declare any dutiable items in his declaration slip. Examination of his baggage and person resulted in the recovery of one IBM think pad, One Samsung Mobile phone, one Sansung FM radio and one nokia mobile phone. Gold jewelry in the form of fish pendants and bracelets totally weighing 1080 gms valued at Rs. 27,54,000/- (Rupees Twenty Seven Lacs Fifty four thousand) was also recovered from the knee caps worn on his shins. After due process of the law the Original Adjudicating Authority, vide his order 58/2014 dated 03.03.2014 absolutely confiscated the gold bars referred to above under section 111(d) and 111(l) of the Customs Act, 1962. A Penalty of Rs. 2,50,000/- under Section 112 (a) of the Customs Act, 1962 and penalty of Rs. 50,000/- under section 114AA was also on the Applicant.

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner (Appeals). The Commissioner of Customs (Appeals-I) Bengaluru, vide his Order in Appeal 181/2016 dated 15.03.2016 rejected the Appeal.

4. The applicant has filed this Revision Application inter alia on the grounds that;

4.1. The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; When penalty is imposed under section 112 (a) and (b), penalty cannot be imposed under section 114AA of the Customs Act, 1962; He was all along under the control of the customs officers at the Red Channel and did not pass through the Green channel; He was intercepted at the baggage scan area where when asked he revealed that he was carrying gold purchased for his family in Singapore, but the officers proceeded to register the case.

4.2 It has also been pleaded that the Hon'ble Supreme Court has in the case of Om Prakash vs Union of India states that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions; the CBEC circular 9/2001 gives specific directions stating that a



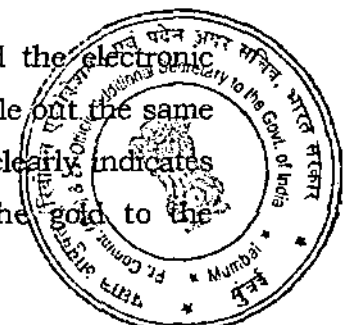
declaration should not be left blank, if not filled in the Officer should help the passenger to fill in the declaration card; Section 125 of the Customs Act, 1962 is very clear that even when confiscated the officer adjudicating may, in the case of any goods give it to the owner or the person from whose possession these goods have been recovered; Goods must be prohibited before export or import simply non declaration cannot become prohibited; No fabricated documents were filed as he was under the scrutiny of the officers no declaration was submitted and therefore penalty under section 114AA is not applicable; The Apex court in the case of Hargovind Dash vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has pronounced that the quasi judicial authorities should use the discretionary powers in a judicious and not an arbitrary manner; The High Court of Andhra Pradesh in the case of Sheik Jamal Basha vs GOI reported in 1997 (91) ELT 277 (AP) held that under section 125 of the Customs Act, 1962 it is mandatory to give option to the person found guilty to pay in lieu of confiscation.

4.3 The Revision Applicant cited various assorted judgments in support of re-export even when the gold was concealed and prayed for permission to re-export the gold on payment of nominal redemption fine and reduced personal penalty.

5. A personal hearing in the case was held on 19.04.2018, the Advocate for the respondent Shri Palanikumar re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed. Nobody from the department attended the personal hearing.

6. The Government has gone through the case records it observed that the Applicant had concealed the gold jewelry in the knee caps worn on both of his shins. It was an attempt made with the intention to hoodwink the customs authorities. Government also notes that the gold and the electronic goods was not declared by the Applicant. Filing of true and correct declaration under the Customs Act, 1962 is an absolute and strict obligation of any passenger.

7. The applicant had deliberately concealed the seized gold and the electronic goods to avoid detection and to dodge the Customs Officer and smuggle out the same without payment of appropriate duty. This ingenious concealment 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 jewelry and other goods without payment of customs duty. There is no doubt about the fact that the Applicant has contravened the provisions of Customs Act, 1962 and therefore, the seized gold are liable for absolute confiscation. In view of the above mentioned observations the Government is inclined to agree with the Order in Appeal and holds that the impugned goods has been rightly confiscated absolutely. Hence the Revision Application is liable to be rejected.

8. Taking into consideration the foregoing discussion, Government upholds the Order in Appeal No. 181/2016 dated 15.03.2016.

9. Revision Application is dismissed.

10. So, ordered.

(ASHOK KUMAR MEHTA)

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

ORDER No. 235/2018-CUS (SZ) / ASRA/Mumbai.

DATED 27.04.2018

To,

Shri Abul Hassan Irshath Ahamed

C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai 600 001.

True Copy Attested

SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

Copy to:

1. Commissioner of Customs (Airport) Bengaluru.
2. Commissioner of Customs (Appeals) Bengaluru.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

