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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
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Mumbai-400 005

F.No. 373/174/B/16-RA | 225

Date of Issue 03/05/2018

ORDER NO. 246/2018-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. Boharie Mohamed Zarook

Respondent : Commissioner of Customs (Airport), Visakhapatnam.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. VIZ-CUSTM-OOO-APP-026-16-17 dated 05.07.2016 passed by the Commissioner of Customs (Appeals) Visakhapatnam.



ORDER

This revision application has been filed by Shri. Boharie Mohamed Zarook against the Order in Appeal No. VIZ-CUSTOM-OOO-APP-026-16-17 dated 05.07.2016 passed by the Commissioner of Customs (Appeals), Visakhapatnam.

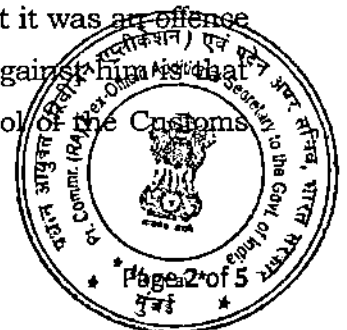
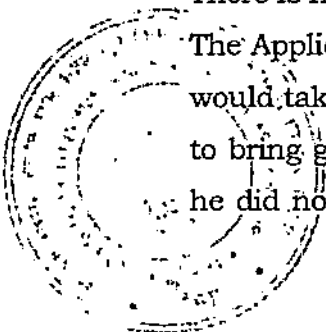
2. Briefly stated facts of the case are that the applicant, an Sri Lankan national, had arrived at the Visakhapatnam Airport on 27.05.2013. On persistent interrogation the Applicant revealed that he had 10(Ten) gold biscuits concealed in his rectum. The Applicant voluntarily ejected 10(Ten) gold biscuits totally weighing 1000 gms valued at 26,73,000/-.

3. After due process of the law the Original Adjudicating Authority, vide his order 12/2013 dated 23.08.2013 absolutely confiscated the gold biscuits referred to above under section 111(d) (l), (m) and (o) of the Customs Act, 1962. A Penalty of Rs. 26,73,000/- under Section 112 (a) & (b) of the Customs Act, 1962 and a Penalty of Rs. 53,46,000/- under Section 114AA of the Customs Act, 1962 was also imposed on the Applicant.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Visakhapatnam. The Commissioner of Customs (Appeals) Visakhapatnam, vide his Order in Appeal C. Cus. No. VIZ-CUSTOM-OOO-APP-026-16-17 dated 05.07.2016 rejected the Appeal.

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

5.1. The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The Adjudication Authority has simply glossed over the judgments and points raised in the Appeal grounds; The goods must be prohibited before export or import, simply because the goods were non declaration goods cannot become prohibited when imported. There is no mention of the Show Cause notice in the impugned Order in Original; The Applicant voluntarily informed the officers of the concealed gold and that he would take it out on his own; the Applicant was not aware that it was an offence to bring gold without proper documents; the only allegation against him is that he did not declare the gold; he was all along under the control of the Customs



officers at the red channel and had not crossed the green channel; the seized gold belongs to him and was purchased through his own earnings;

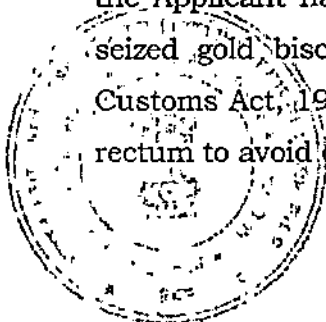
5.2 CBEC circular 9/2001 gives specific directions stating that a declaration should not be left blank, if not filled in the Officer should help the passenger to fill in the declaration card, such an exercise was not conducted by the officers; It has also been pleaded that the Hon'ble Supreme Court has in the case of Om Prakash vs Union of India stated 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 section 125 of the Customs Act clearly mandates that option to redeem the goods in lieu of confiscation is mandatory; he has not made any false declaration or statement and therefore the imposition of penalty under section 114AA is unwarranted.

5.3 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 or release the gold on payment of nominal redemption fine and reduced personal penalty.

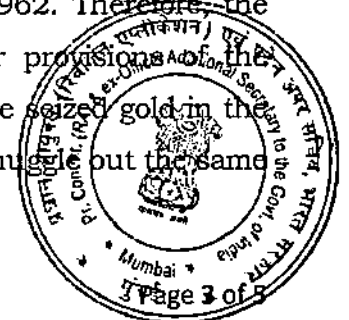
6. A personal hearing in the case was held on 19.04.2018, the Advocate for the respondent Shri Palanikumar re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed. Nobody from the department attended the personal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

7. The Government has gone through the case records it is seen that the Applicant had concealed the gold bars in his rectum. The Applicant is a Foreigner and ineligible to import gold. Government also notes that the gold biscuits were 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 as he was not an eligible passenger to import gold.

8. In his voluntary statement recorded after his interception the Applicant also revealed that he was offered a monetary consideration to conceal and carry the gold and hand it over to some other person in India. There is no doubt about the fact that the Applicant has contravened the provisions of Customs Act, 1962. Therefore, the seized gold biscuits are liable for absolute confiscation under provisions of the Customs Act, 1962 as the applicant had deliberately concealed the seized gold in the rectum to avoid detection and to dodge the Customs Officer and smuggle out the same



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without payment and payment of appropriate duty. This 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 bars without payment of customs duty. In view of the above mentioned observations the Government is inclined to agree with the Order in Appeal and holds that the impugned gold has been rightly confiscated absolutely. Hence the Revision Application is liable to be rejected.

9. Taking into consideration the foregoing discussion, Government upholds the Order in Appeal No. VIZ-CUSTOM-OOO-APP-026-16-17 dated 05.07.2016.

10. Revision Application is dismissed.

11. So, ordered.

(Signature)
27.4.18

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

ORDER No. 246/2018-CUS (SZ) /ASRA/ MUMBAI.

DATED 27.04.2018

To,

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

True Copy Attested

(Signature)
m/s/18

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

Copy to:

1. The Commissioner of Customs, CUSTOM HOUSE, PORT AREA, VISAKHAPATNAM -530035.
2. The Commissioner of Customs (Appeals), Custom House, 4th Floor, PORT AREA, VISAKHAPATNAM -530035
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

