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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. 373/46/B/17-RA & 373/116/B/17-RA | 20

Date of Issue 07/05/2018

ORDER NO. ²⁴⁸⁻²⁴⁹ /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 Mohamed Panis

Respondent : Commissioner of Customs (Airport) Bangalore

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal C.Cus No.
399/2016 dated 08.06.2016 and 10/2017 dated 30.12.2016
passed by the Commissioner of Customs (Appeals) Bangalore



ORDER

This revision application has been filed by Mohamed Panis (herein after referred to as the Applicant) against the order no C. Cus No. 399/2016 dated 08.06.2016 and 10/2017 dated 30.12.2016 passed by the Commissioner of Customs (Appeals), Bangalore.

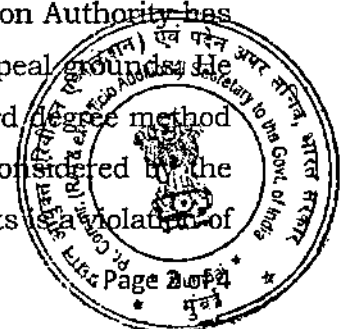
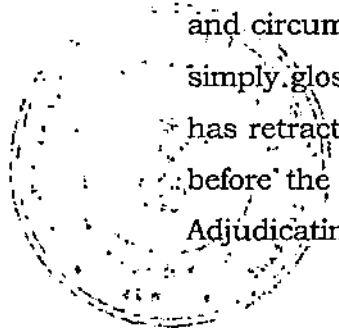
2. During the course of rummaging International flights which are rerouted as domesticated flights the officers of Customs recovered one elongated package with a ring and a handkerchief tied at one end, from the pipe like structure near the seat 15A of the Aircraft. The consignment containing seven gold biscuits, totally weighing 700 gms valued at Rs. 18,79,500/- was accordingly seized by the officers. On repeated interrogation the Applicant who had occupied the seat conceded that the gold was kept by him in the Aircraft and the impugned gold was to be retrieved by somebody else and the Applicant was not aware of the person. The Applicant was arrested and subsequently released on bail.

3. After due process of the law vide Order-In-Original No. 626/2016 dated 26.02.2016 Original Adjudicating Authority absolutely confiscated the gold biscuits under section 111 (d) (i) (l) and (m) of the Customs Act, 1962 read with section 3(3) Foreign Trade (D & R) Act, 1992. A penalty of Rs.9,39,750/- was also imposed under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner (Appeals). The Commissioner of Customs (Appeals) Bangalore, vide his Order in Appeal No 399/2016 dated 08.06.2016 the Commissioner (Appeals) rejected the Appeal. An Appeal was also filed by the Department contesting the non-imposition of penalty under section 114AA, The Commissioner of Customs (Appeals) Bangalore vide its Order in Appeal No. 10/2017 dated 30.12.2016 imposed a penalty of Rs. 1,87,950 under section 114AA of the Customs Act,1962 on the Applicant.

5. The applicant has filed this Revision Application interalia 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. He has retracted his statements which were extracted through third degree method before the ACMM, Bangalore; The reply to the SCN was not considered by the Adjudicating Authority; The non-supply of relied upon documents is a violation of



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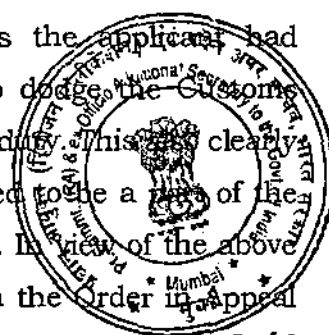
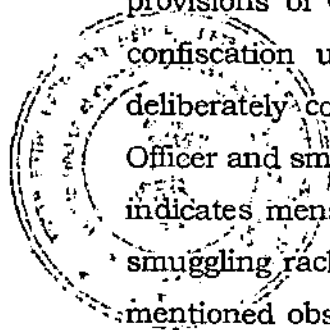
the article 21 and 22(5) of the constitution of India; when penalty is imposed under section 114AA of the Customs Act,1962, the authority cannot impose penalty under section 112 of the Customs Act,1962; that he was made to sign that he has received the documents but the same were not handed over to him; That the officers of Customs have cooked up the story and as such he has never brought any gold or concealed it in the seat of the Aircraft, the case has been registered on suspicion; The confiscation of the goods valued at Rs. 18,79,500/. And the penalty of Rs. 9,39,750/- imposed is very high and the same is to be reduced substantially and reasonably.

5.3 The Revision Applicant cited various assorted judgments and boards policies in support of reduced personal penalty and pleaded that the Honble Revisionary Authority may set aside the order and release the gold and reduce Personal penalty.

6. A personal hearing in the case was held on 19.04.2018, the Advocate for the respondent Shri Palanikumar attended the hearing he re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where redemption 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 accepted the offer of a carrier for monetary considerations. He carried the gold into the aircraft and placed it as directed the pipe like structure near the seat 15A of the Aircraft. The gold was to be retrieved by somebody else. The gold was ingeniously concealed with the intention to hoodwink the customs authorities. Government notes that the Applicant has willingly submitted to be a part of a smuggling syndicate. If the flight was not taken up for rummaging the gold would not be intercepted and the gang would have succeeded in taking out the gold and evading customs duty.

8. There is no doubt about the fact that the Applicant has contravened the provisions of Customs Act, 1962. Therefore, the seized gold is liable for absolute confiscation under section 111 of the Customs Act, 1962 as the applicant had deliberately concealed the seized gold to avoid detection and to dodge the Customs Officer and smuggle out the same without payment of appropriate duty. This clearly indicates mensrea, and that the Applicant had willingly submitted to be a part of the smuggling racket and therefore is liable for imposition of penalty. 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 399/2016 dated 08.06.2016 and 10/2017 dated 30.12.2016.

10. Revision Application is dismissed.

11. So, ordered.

(Handwritten Signature)
27.4.18

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

ORDER No. ²⁴⁸⁻²⁴⁹ /2018-CUS (SZ) /ASRA/MUMBAI.

DATED 27.04.2018

To,

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

True Copy Attested

(Handwritten Signature)
27/4/18

SANKARSAN MUNDA
Asstt Comr
C. O. Ex.

Copy to:

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

