

371/79/B/14-RA

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GOVERNMENT OF INDIA
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F.No.371/79/B/14-RA/646

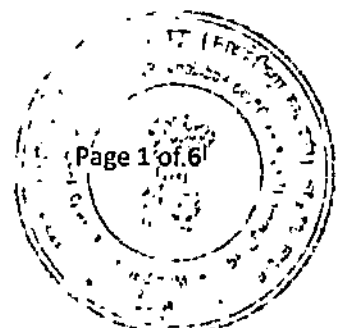
Date of Issue : 27/12/2017

ORDER NO. 14/2017-CUS (SZ) / ASRA / MUMBAI/ DATED 26.12.2017 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. Abdul Kadar.

Respondent : Commissioner of Customs (Appeals), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C.Cus No : 1733/2014 dated 25.09.2014 passed by the Commissioner of Customs (Appeals), Chennai



ORDER

This revision application has been filed by Shri Abdul Khadar, hereinafter referred to as the "Applicant", against order-in-appeal no. C.Cus No : 1733/2014 dated 25.09.2014 passed by the Commissioner of Customs (Appeals), Custom House, Chennai.

2. The facts of the case in brief are as under;

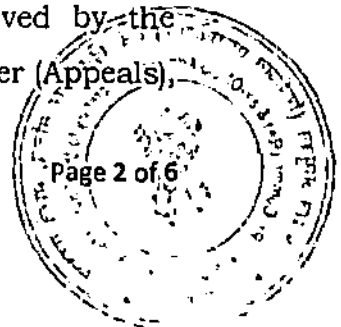
The Applicant, Shri Abdul Khader, holder of Indian passport No.J8211686 dated 07.06.2011, who arrived at Chennai from Dubai by Indigo Airlines Flight No.6E 66 on 04.03.2014 was walking out through Green Channel with one hand bag and one checked-in-luggage. The officers of the Air Intelligence Unit, noticing nervousness of the Applicant intercepted him and questioned him as to whether he was carrying any gold/gold ornaments or contraband, the passenger replied in the negative and produced the customs declaration card wherein he had declared the value of the goods carried by him as "NIL". As the Applicants reply was not satisfactory, search of his person and examination of his baggage was carried out in the presence of independent witnesses. The search of his checked-in-baggage revealed gold sheets totally weighing 580 grams of 24 Karat purity totally valued at Rs.17,88,720/- (Rupees Seventeen lacs eighty eight thousand seven hundred and twenty), which were ingeniously concealed inside layers of all the side walls of the carton box. The Applicant did not possess any valid license to import the said gold and as he had attempted smuggle the said gold by way of changing its form and trying to conceal it in his baggage, the same were seized under Mahazar dated 04.03.2014.

3. After due process of law, vide Order in Original No. 235/2014 (Air-AIU) dated 22.04.2014 the impugned goods were confiscated absolutely under Sections 111(d) & (I) of the Custom Act, 1962 read with Section 3(3) of the Foreign Trade (Development & Regulation) Act, 1992. Also a penalty of Rs.1,80,000/- was imposed under Section 112(a) of the Customs Act. 1962. Aggrieved by the

Impugned Order the Appellant filed an appeal, before the Commissioner (Appeals),



Signature



The Applicant submits that in view of the above submissions the impugned order deserves to be set aside. The gold be released to the Applicant on nominal fine, and considering the cited cases, the personal penalty be reduced , as it is the first offence of the Applicant.

5. A personal hearing was granted to the Applicant on 04.12.2017, which was attended by the Advocate, Shri N. J. Heera. The advocate requested for an adjournment which was acceded to and the personal hearing was rescheduled on 13.12.2017. The Advocate, Shri A. M. Sachwani, appeared for the Applicant and re-iterated the submissions filed in the grounds of Appeal. The Advocates also submitted a compilation of judgments in respect of restricted goods, assailing the absolute confiscation of the goods and wherein the option of redemption of the goods was not considered and the discretion of release of the seized goods was not proffered. The Advocate pleaded that the Revision Application be allowed.

6. I have gone through the facts of the case. The Applicant was intercepted as he tried to walk through the Green Channel. On interception, the officers of the Air Intelligence Unit questioned the Applicant as to whether he was carrying any gold/gold ornaments or contraband, giving him an opportunity to declare the contraband he was carrying. The Applicant replied in the negative and produced the customs declaration card wherein he had declared the value of the goods carried by him as "Nil". This clearly indicates that he had no intentions of declaring the gold as required under Section 77 of the Customs Act, 1962. Secondly, the Applicant had concealed the impugned gold in the sidewalls of the carton box, in order to hoodwink the Customs Authorities. Further confirming that he was fully aware of the customs rules and that these items should suffer customs duty for import and the violations were not out of ignorance as proffered by him in the Revision Application. It is thus clear that the Applicant wanted to smuggle the gold into India, the concealment reveals mens rea.

7. The Applicant in his statement has stated that while searching for a job in Dubai, he met a person named Abdulla, who also hailed from his native district, that Abdulla asked him to carry some gold from Dubai to Kasargod by concealing



DM

it in the carton box for a monetary consideration of Rs. 30,000/- and air ticket fare to which he agreed. The statement reveals that the Applicant had agreed to undertake this venture for monetary consideration clearly indicating that the offence was committed in a premeditated manner. The above acts have thus rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962.

8. Further, in his own statement the Applicant has stated that he had gone to Dubai on a visit visa in search of a job on 18.02.2014. He was intercepted by the Customs authorities while returning to India on 04.03.2014. Hence, he has not completed 6months of stay abroad and was not eligible to import gold as stipulated under Notification no. 12/2012-Cus dated 17.03.2012. Thus, the ineligibility of the Applicant to import gold renders the gold as prohibited goods. The ratio of the judgment by the Supreme Court in the case of Om Prakash Bhatia vs Commissioner of Customs which states that "*prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods.*" is squarely applicable in this case.

9. In the case of S. Faizal Khan vs. Jt. Commr. of Cus. reported in 2010 (259) E.L.T. 541, the Hon'ble High Court of Madras has refused redemption of goods to the passenger who was carrying the goods on behalf for someone else for monetary consideration. In the case of Ramasamy vs Jt. Sec. to the Govt. of India reported in 2017 (348) E.L.T. 671 (Mad.) The High Court of Madras has upheld absolute confiscation stating "The petitioner does not fall within the definition of "eligible passenger"..... the authorities have concurrently recorded that the petitioner did not file true and correct declaration and attempted to smuggle the Gold jewellery". The ratio of these judgments justifying absolute confiscation are also applicable to this case.

10. Thus, there is no doubt that the applicant has contravened the provisions of Customs Act, 1962 and rendered the seized gold liable for confiscation. The intentional indigenous concealment, misdeclaration to the Customs



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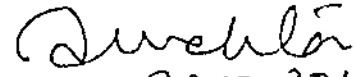
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authorities, the willingness of the Applicant to act as a carrier for monetary benefits and ineligibility of the Applicant to import the gold, justifies absolute confiscation of the gold by the lower authority. In view of the facts mentioned above, the Government is of the opinion that there is no merit in the Revision Application and the impugned gold is liable for absolute confiscation. The Revision Application is liable for rejection.

9. The Government finds no reason to interfere with the Order-in-Appeal. The Appellate order C.Cus No : 1733/2014 dated 25.09.2014 passed by the Commissioner of Customs (Appeals), Chennai is upheld.

10. Revision application is dismissed.

11. So, ordered.


28.12.2017

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

ORDER No. 24/2017-CUS (SZ) /ASRA/MUMBAI.

DATED 26.12.2017

To,

Shri Abdul Kader,
Peravalappil House,
Perumbala PO, Kalanad VIA,
Kasargod District, Kerala.

True Copy Attested



SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex. (RA)

Copy to:

1. The Chief Commissioner, Customs, Customs House, Rajaji Salai, Chennai
2. The Principal Commissioner of Customs (I), New Customs House, Meenambakkam, Chennai 27
3. The Commissioner of Customs (Appeals), 60, Rajaji Salai, Chennai 600 001.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

