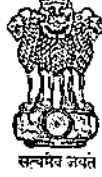


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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

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F.No. 373/208/B/16-RA / 6160

Date of Issue 26/10/21

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ORDER NO. <sup>264</sup> /2021-CUS (SZ)/ASRA/MUMBAI DATED 20.10.2021 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.

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Applicant : Shri. Abdul Khader Kunhamoo.

Respondent : Commissioner of Customs, NCH, Mangalore - 575 010.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. 477 /  
2016 dated 30.06.2016 [A.No. 255/2016 CUS (M)  
837/2016] passed by the Commissioner of Customs  
(Appeals), Bangalore - 560 001.

ORDER

This revision application has been filed by Shri. Abdul Khader Kunhamoo (herein referred to as Applicant) against the Order in Appeal No. 477 / 2016 dated 30.06.2016 [A.No. 255/2016 CUS (M) 837/2016] passed by the Commissioner of Customs (Appeals), Bangalore – 560 001.

2. Brief facts of the case are that on 17.03.2015, the officers of Customs, Mangalore while rummaging a Jet Airways flight 9W531/17.03.2012, which had arrived from Dubai, recovered gold pellets weighing 583.300 grams valued at Rs 15,25,330/- wrapped in adhesive tape and affixed under seat no. 23F using double gum tape. Immediately, in the arrival hall, the Customs officers after ascertaining the details of the person who had occupied seat no. 23F, intercepted the applicant. The applicant was exiting the Mangalore International Airport (MIA) after handing over a NIL Customs Baggage Declaration Form. He was asked whether he had occupied seat no. 23F to which he replied in the affirmative. To the query whether he was carrying any dutiable goods, the applicant had replied in the negative. On questioning, the applicant admitted that he had taped the packet under seat no. 23F and that it contained gold pellets. The applicant revealed that he had brought the gold and affixed it under seat no. 23F at the instance of one, Mr. Arif of Dubai. In his statement recorded under Section 108 of Customs Act 1962, the applicant informed that he had carried out the act for monetary consideration of Rs. 5000/-. The applicant was not in possession of any document pertaining to the gold and had revealed that Mr. Arif had not informed him as to how the said gold pellets would be retrieved from the aircraft. The said packet contained 5 gold bars totally weighing 583.300 grams and valued at Rs 15,25,330/-. The same was seized as it appeared to be liable for confiscation under the provisions of Section 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962 as it was attempted to be smuggled into India clandestinely without any documents.

3. The Original Adjudicating Authority vide its Order-In-Original No. Sl. No. 04/2016 ADC dated 23.06.2016 issued through C.No. VIII/10/35/2015 Cus. Adjn/906 had ordered absolute confiscation of the 5 gold bars totally weighing 583.300 gms and valued at Rs. 15,25,330/- and imposed a penalty of Rs. 250,000/- under the provisions of Section 112(a) of the Customs Act, 1962 and penalty of Rs 1,50,000/- under the provisions of Section 114AA of the Customs Act, 1962.

4. Aggrieved by this order, the Applicant preferred an appeal with the Commissioner of Customs (Appeals), Bangalore – 560 001 pleading for release of the gold on redemption fine and penalty. Commissioner of Customs (Appeals), Bangalore) vide his order . 477 / 2016 dated 30.06.2016 [A.No. 255/2016 CUS (M) 837/2016] rejected the appeal.

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

5.1. that the Appellate Authority was wrong in holding applicant liable for penalty under Section 112(a) of the Customs Act, 1962.

5.2. that his statement was recorded in English, a language which he does not know and speak and he was compelled to sign the statement.

5.3. that he had never been involved in any case previously.

5.4. that the confiscated gold does not belong to him and that he was from a poor family without any permanent job and penalty of Rs. 1,50,000/- was too heavy to pay and pleaded for reduction.

Applicant has prayed to the Revision Authority to set aside the impugned order and to render justice.

6. Personal hearings in the case was scheduled in the video conferencing mode on 20.08.2021 and 27.08.2021. Nobody attended the hearing on behalf of the Applicant. Shri. Vasudeva Naik, Asstt. Commrr appeared on behalf of the

Respondent department and reiterated earlier submissions. He submitted that the Commissioner (Appeals) has passed a reasonable order and requested to maintain the same. . The case is, therefore, taken up for decision on the basis of evidence on record.

7. The Government has gone through the facts of the case. The Applicant had used a very ingenious method to smuggle the gold into the country. The packet containing the impugned gold bars was cleverly affixed under the seat occupied by the applicant. It suggests that a syndicate was involved in smuggling the gold clandestinely into the country with intent to evade payment of any duty. But for the alertness of the Rummaging staff of Customs, the gold would have escaped detection. The applicant in his revision application has submitted that the gold does not belong to him and his prayer is for waiver / reduction in the penalties imposed on him. The Applicant did not declare the gold bars as required under section 77 of the Customs Act, 1962. The quantity of gold recovered was ingeniously concealed to avoid detection. The confiscation of the gold is therefore justified and the Applicant has rendered himself liable for penal action for his act of omission and commission.

8. Government observes that the Hon'ble High Court of Madras, in the case of Commissioner Of Customs (Air), Chennai-I V/s P. Sinnasamy reported in 2016 (344) E.L.T. 1154 (Mad.), in para 47 of the said case the Hon'ble High Court has observed "*Smuggling in relation to any goods is forbidden and totally prohibited. Failure to check the goods on the arrival at the customs station and payment of duty at the rate prescribed, would fall under the second limb of section 112(a) of the Act, which states omission to do any act, which act or omission, would render such goods liable for confiscation.....*". Thus, failure to declare the goods and failure to comply with the prescribed conditions has made the impugned gold "prohibited" and therefore liable for confiscation and the Applicants thus liable for penalty.

9. Government also observes that the manner in which the gold was concealed i.e. placed in a packet and wrapped with adhesive tape and ingeniously affixed under the seat occupied by him in the aircraft reveals that the applicant

has connived with an intention to evade payment of duty. It also revealed his criminal bent of mind and a clear intention to evade duty and smuggle the gold into India. All these have been properly considered by the Appellate Authority while confiscating the gold bars absolutely.

10. The main issue in the case is the manner in which the impugned gold was attempted to be brought into the Country. The option to allow redemption of seized goods is the discretionary power of the adjudicating authority depending on the facts of each case and after examining the merits. In the present case, the manner of concealment being clever and ingenious with a clear attempt to smuggle the five gold bars, it is a fit case for absolute confiscation which would act as a deterrent to such offenders. Thus, taking into account the facts on record and the serious and grave modus operandi, the adjudicating authority had rightly ordered the absolute confiscation of gold. But for the intuition and the diligence of the Customs Officers, the gold would have passed undetected. Hon'ble Delhi High Court in the case of Jain Exports Vs Union of India 1987(29) ELT753 has observed that, "*the resort to Section 125 of the C.A. 1962, to impose fine in lieu of confiscation cannot be so exercised as to give a bonanza or profit for an illegal transaction of imports.*". The redemption of the gold will encourage such concealment as, if the gold is not detected by the Custom authorities the passenger gets away with smuggling and if not, he has the option of redeeming the gold. Such acts of mis-using the liberalized facilitation process should be meted out with exemplary punishment and the deterrent side of law for which such provisions are made in law needs to be invoked. The order of the Appellate authority is therefore liable to be upheld and the Revision Application is liable to be dismissed.

11. With regard to the request by the applicant for reduction of the penalty amount, especially since he belonged to a poor family and was jobless, the Government finds that the appellate authority has reduced the penalty of Rs. 2,50,000/- to Rs. 2,00,000/- and has completely set aside the penalty of Rs. 1,50,000/- imposed under Section 114AA of the Customs Act, 1962. Government does not find any ground to further reduce the penalty.

12. In view of the above, the Government upholds the Order of absolute confiscation passed by the Appellate authority.

13. Accordingly, the Revision Application is disposed of on the above terms.

*Shrawan Kumar*  
20/10/21

( SHRAWAN KUMAR )

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

ORDER No. <sup>264</sup> /2021-CUS (SZ) /ASRA/

DATED 20-10-2021

To,

1. Shri. Abdul Khader Kunhamoo, S/o Late Kunhamoo Muneer Manzil, Poochakkad, Thekkupuram, Pallikkara, Keekan P.O, Kasargod, Kerala - 671 316.
2. The Commissioner of Customs, New Customs House, Panmbur, Mangalore - 560 010.

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1. Sr. P.S. to AS (RA), Mumbai.
2. Guard File,
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