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SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - 1, Cuffe Parade,
Mumbai-400 005

F.No. 373/01/B/17-RA / 2019

Date of Issue

ORDER NO. 305/2021-CUS (SZ)/ASRA/MUMBAI
DATED 02.12.2021 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.

Applicant : Shri. Sirajuddin

Respondent : Commissioner of Customs, Cochin International Airport,
Nedumbassery, Cochin - Pin : 682009.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
120/2016 dated 29.09.2016 ([DOI : 05.10.2016], [F.No.
C27/83/Air/2016 AU CUS]) passed by the Commissioner
of Customs (Appeals), Cochin - 682 009.

ORDER

This revision application has been filed by Shri. Sirajuddin (herein referred to as Applicant) against the Order in Appeal No. 120/2016 dated 29.09.2016 [F.No. C27/83/Air/2016 AU CUS] passed by the Commissioner of Customs (Appeals), Cochin – 682 009.

2. The Customs Officers at Cochin International Airport, Nedumbassery had on 31.05.2015 seized 2 nos of gold bars weighing 1 kg each from Shri. Naushad Palliparambath who had arrived from Dubai onboard Flight No. EK532. The gold bars weighing 2 kgs in total and valued at Rs. 51,18,820/- (IMV), had been concealed in a black coloured elastic belt, interlayered with pouches which was worn by Shri. Naushad Palliparambath around his waist. Investigations had revealed that the applicant, viz Shri Sirajuddin was also involved in the said offence. Shri. Naushad Palliparambath had revealed that he was to hand over the gold bars to the applicant who was waiting outside to collect the same. The Officers had intercepted the applicant who had been waiting outside the airport and carried out investigations.

3. After, due process of law, the Original Adjudicating Authority viz, Addl. Commissioner of Customs, vide Order-In-Original No.82/2016 dated 29.03.2016, ordered the absolute confiscation of the two gold bars valued at Rs. 51,18,820/- (International Value) under Section 111(d), (i), (j), (l) and (m) of the Customs Act 1962 and imposed a Penalty of Rs. 2,00,000/- on the passenger viz, Shri Naushad Palliparambath under Section 112(a) of the Customs Act 1962 and also imposed a Penalty of Rs.2,00,000/ on the applicant under Section 112(a) and Section 117 of the Customs Act 1962.

4. Aggrieved by this Order-In-Original, the applicant filed an appeal before the appellate authority, who vide his Order in Appeal No. 120/2016 dated 29.09.2016 [F.No. C27/83/Air/2016 AU CUS] rejected the appeal.

5. Aggrieved by the above Order-in-Appeal, the applicant has filed a revision application on the following grounds of revision,

5.1. that the Lower Appellate Authority (LAA) failed to consider /discuss the submissions of the applicant against penalty imposed and hence the impugned order deserves to be set aside.

5.2. that the LAA had erred holding that the applicant was liable for penalty under Section 112 and had failed to consider that the gold had not been seized from him, that he was not the owner of the gold and had not possessed the seized gold nor carried or dealt with the same. Also, there were no allegations / findings that applicant had made any arrangements abroad or at the airport in respect of seized,

5.3. that admittedly, the impugned gold belonged to Shri. Naushad which had not been taken into consideration by the LAA.

5.4. that citing case of Shafeek PK. Vs Commr. Cus, Cochin- 2015 (325) E.L.T. 199 (Tri. Bang.), it was pleaded that a self-contradictory statement cannot be adopted as a reason for penalizing the applicant.

5.5. that penalty under Section 112(a) and 117 cannot be imposed together.

5.6. that the Applicant was only a victim of circumstances, financially very poor and had been dragged into the case because of mistaken notion and the LAA ought to have considered this aspect while imposing penalty on the applicant

Under the above facts and circumstances of the case, the Applicant has prayed that the Revision Authority be pleased to set aside the orders of both the lower authorities and to render justice and grant full relief and to order the re-export of the impugned gold and thereby render justice.

6. Personal hearings in the case through the video conferencing online mode was scheduled for 03.11.2021 / 10.11.2021. Mr. Mitra Prasad, Advocate appeared online and submitted that the applicant had nothing to do with the gold brought by the passenger. Therefore, he requested for dropping the penalty against the applicant. He also submitted that applicant was very poor and was in no condition to pay the penalty.

7. Government has gone through the case papers. Government finds that this application is only on the limited point of imposition of excessive penalty pleaded by the Applicant. The role of the applicant, as brought out in the investigations is that he was waiting outside the airport to receive the smuggled gold bars brought by the international passenger. Government notes that the applicant was intercepted outside the airport on the day of the seizure of the impugned gold and the interception was based on the statement of the passenger viz, Shri. Naushad Palliparambath and disclosures made by him. Government notes that the lower authorities have confirmed the absolute confiscation of the gold bars seized from the said passenger and the same has not been challenged.

8. On the limited issue of the imposition of a penalty of Rs. 2,00,000/- under Section 112(a) and Section 117 of the Customs Act, 1962, on the applicant which has been agitated in this revision application, the Government finds that this aspect has been gone into in great detail by the appellate authority which while rejecting the appeal, at para 8 of its Order has held, "..... Appellant's own admission reveals that he had come to the airport to receive passenger bringing gold. Appellant had admitted that he was doing this for the sake of remuneration offered to him by the smuggling syndicate engaged in gold smuggling. This fact has also been corroborated by the admissions of Shri. Naushad. Thus, the involvement of the appellant in the subject offence stands established. The argument by the appellant that there is no evidence against him and he had nothing to do with the case is devoid of merit. Retraction by the appellant came only after a period of 6 months and can be seen only as an afterthought and hence, not acceptable. The penalty on the appellant under

Section 112(a) of the Customs Act, 1962 seems to be commensurate with the offence committed...".

9. The Government notes that all aspects of the case have been looked into by the appellate authority. The applicant has not been able to convincingly clarify his role of waiting at the airport on the day of the seizure of the impugned gold and the statement of the passenger naming the applicant stood corroborated. Government observes that the order of the appellate authority imposing penalty on the applicant is proper and judicious and the penalty of Rs. 2,00,000/- imposed is commensurate with the omissions and commissions committed. The Government finds no merit in the revision application filed by the applicant and Government does not find it necessary to interfere with the order of the appellate authority.

10. Accordingly, the revision application is dismissed.

Shrawan
2/12/21

(SHRAWAN KUMAR)

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

ORDER No. ³⁰⁵ /2021-CUS (SZ) /ASRA/

DATED 02-12-2021

To,

1. Shri. Sirajuddin, S/o. Alavi, Perappurath House, NSS College - PO, Manjeri, Malappuram, Kerala, Pin : 677 122.
2. Commissioner of Customs, Custom House, Willingdon Island, Cochin, Kerala, Pin : 682 009.

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