

373/53/B/14-RA

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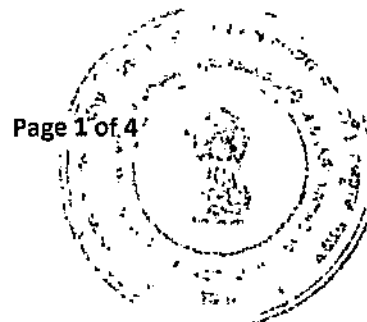
Date of Issue 28.08.2020

ORDER NO. ³²2019-CUS (SZ)/ASRA/MUMBAI DATED 24.11.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Mohammed Ali Moideen Kunhi

Respondent : Commissioner of Customs, Bangalore.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 476/2013 CUS (M) dated 19.12.2013 passed by the Commissioner of Customs (Appeals), Bangalore.



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ORDER

This revision application has been filed by Shri Mohammed Ali Moideen Kunhi (herein referred to as Applicant) against the order No. 476/2013 CUS (M) dated 19.12.2013 passed by the Commissioner of Customs (Appeals), Bangalore.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Mohammed Ali Moideen Kunhee at the Mangalore International Airport, on 18.01.2013 after his checked-in revealed some suspicious images. A detailed scrutiny resulted in recovery of 3 nos of gold bars totally weighing 349.970 grams totally valued at Rs. 10,84,907/- (Rupees Ten Lakhs Eighty four thousand Nine hundred and Seven). The gold bars were ingeniously concealed in the battery compartment of mobile phones in place of batteries recovered from the checked in baggage of the Applicant.

3. After due process of the law vide Order-In-Original No. 03/2013-ADC dated 24.05.2013 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (i) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 2,50,000/- (Rupees Two lacs Fifty thousand) under Section 112 (a) and (b) of the Customs Act,1962. A penalty of Rs. 50,000/- (Rupees Fifty thousand) was also imposed under section 114AA of the Customs Act,1962.

4. Aggrieved by this order the applicant filed an appeal with the Commissioner of Customs (Appeals), Commissioner (Appeals) vide his order No. 476/2013 CUS (M) dated 19.12.2013 rejected the appeal of the Applicant.

5. Aggrieved with the above order the Applicant, has filed this revision application interalia on the grounds that;

5.1 The order of the Commissioner (Appeals) is totally vitiated and liable to be set aside; The said items do not fall into the category of 'restricted or prohibited goods' ;The natural course for the original authority was to release the gold pieces on payment of import duty.



leviable thereon and reasonable fine; The case laws relied upon by the Addl. Commissioner differ with the facts of the case in the present case; the gold bars was well below the permissible quantity whose import otherwise not prohibited; The regime of gold import has seen liberalization, notwithstanding the violation of baggage provisions cannot be viewed as smuggling; The imposition of penalty under both the section 112 (a) and 114AA of the Customs Act, 1962 is not justified;

5.2 The Revision Applicants prayed for leniency as regards imposition of redemption fine under section 125 of the Customs Act, 1962 and the gold may be ordered for release after deducting the penalties as held imposable.

6. Personal hearings in the case were scheduled on 05.04.2018, 28.08.2018 and finally held on 07.11.2019. The advocate for the Applicant Shri Pradyumna G. H. appeared for hearing and reiterated the submissions in the Revision application. However nobody representing the respondents appeared for the hearing.

7. The Government has gone through the facts of the case, It is on record that the gold was not declared as mandated under section 77 of the Customs Act, 1962. The baggage of the Applicant was subjected to a search and thereafter the gold was recovered. The gold was ingeniously concealed in the battery compartment of mobile phones which were recovered from the checked in baggage of the Applicant and clearly indicates mensrea. Had the Applicant not been intercepted before the exit, the gold would have been taken out without payment of customs duty. The Applicant in his statement dated 18.01.2013 recorded before Customs officers has also admitted that he is not the owner of the gold and had carried it for monetary consideration. The above acts have therefore rendered the gold for absolute confiscation and the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed penalty and the Appellate Authority has rightly upheld the order. There is no reason on record to interfere with the impugned order.



9. Accordingly, The impugned Order in Appeal No. 172/2016 dated 14.03.2016 passed by the Commissioner of Customs (Appeals), Bangalore is upheld. Government however observes that once penalty has been imposed under section 112(a) there is no necessity of imposing penalty under section 114AA. The penalty of Rs. 50,000/- (Rupees Fifty thousand) imposed under section 114AA of the Customs Act,1962 is set aside.

10. Revision application is disposed of on above terms.

11. So, ordered.

(SEEMA WARRA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. ³²/2020-CUS (WZ) /ASRA/MUMBAI

DATED 24.04.2020.

ATTESTED

To,

Shri Mohammed Ali Moideen Kunhi,
H. No. 17/32, Kadavath,
Thalagara Kasargod Municipality,
Kasargod (Kerala).

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

Copy to:

1. The Commissioner of Customs, Kempegowda International Airport, Bangalore.
2. Shri Pradyumna G. H., Advocate, C/o Ken Tree Consultants Pvt. Ltd., No. 371, 2nd Floor, 8th Main, Sadashiv Nagar, Bangalore -560 080.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

