



ORDER

This revision application has been filed by Shri P. Paulraj (herein referred to as Applicant) against the order no 282/2016 dated 12.07.2016 passed by the Commissioner of Customs (Appeals), Chennai.

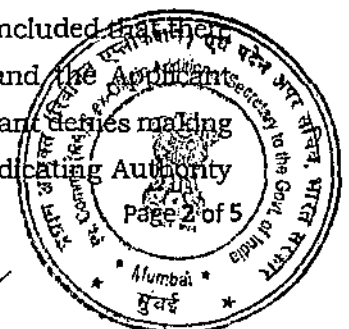
2. Briefly stated facts of the case are that the officers of Directorate of Revenue Intelligence on specific intelligence intercepted a passenger by name, Shri Abubaker Sithikali who arrived from Singapore. 4 (Four) kilograms of gold valued at Rs. 1,08,12,000/- ( Rupees One Crore Eight Lakhs Twelve thousand) was seized from the passenger. Enquiries conducted revealed that the gold was to be collected by the Applicant who will receive the gold from the passenger at the Gents toilet in the Airport. The officers accordingly intercepted the applicant making the coded knock on the plywood panel of the toilet panel.

3. The Original Adjudicating Authority, vide order No. 517/19.03.2016 absolutely confiscated the gold mentioned above under section 111(d) & (l) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A Personal penalty of Rs. 3,00,000/- was also imposed under Section 112 (a) of the Customs Act, 1962. A personal penalty of Rs. 5,000/- 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) Chennai. The Commissioner of Customs (Appeals) Chennai, vide his order No. 282/2016 dated 12.07.2016 interalia observed that the role of the Applicant in the conspiracy was to receive the gold and pass it on, he has fulfilled his part of the conspiracy by proceeding to the toilet and making the coded knocks. To that extent he has come in contact of the gold and has played his role. The subsequent part of the conspiracy never took place and they are in the realm of conjecture. The Commissioner (Appeals) further held that the Applicants role has been completed and rejected the Appeal of 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; Two of the letters relied upon by the Adjudicating Authority are dated 311 days and 314 days after issuance of the Show Cause Notice;; The Adjudicating Authority has incorporated several evidences which are not true; the Adjudication Authority has concluded that there were extensive calls between Aboobaker, Shri Soundarajan and the Applicant which is absolutely false and not backed by evidence; The Applicant denies making any calls to the Shri Aboobacker; The conclusion of the Adjudicating Authority

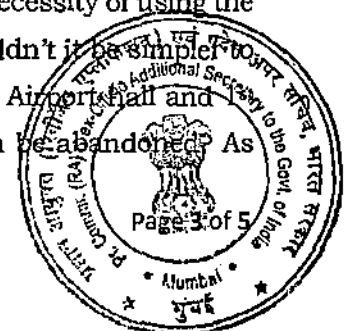


that the Applicant entered into a conspiracy is not supported by any documentary evidence; The order states that the Applicant entered into a conspiracy with the passenger Shri Aboobacker, Ajmal Kaka, Farook and Mohamed Yoosuf, none of the three persons have been apprehended by DRI, infact it is not known whether they actually exist, and therefore under the circumstances the conspiracy is a completely wrong conclusion drawn by the Adjudicating authority; None of the acts by the Applicant or omissions have a direct connection for the confiscation of the gold as the Applicant has neither met Shri Aboobacker the passenger, nor has he come in contact with the gold; Therefore, section 112(a) Customs Act, 1962 is not attracted and penalty is not leviable; Both the witness who have signed the Mazahar of seizure are employed in the duty free office, both were attending their duties in the duty free shop and both were taken after their duty hours to sign the Mazahar as if they have witnessed the proceedings; Further, the DRI theory that the Applicant was to take the gold out of the Airport is also false as everybody has to pass through the metal detector when leaving the Airport; There is no separate way to go around the metal detector; the Applicant also claims that an immigration officer cannot carry his mobile on duty, this is a rule and it is strictly imposed, the phone is surrendered on joining duty every day and therefore the contention that he was speaking on his mobile when intercepted is not true; It appears that the interception of the passenger on stepping out of the aircraft was an error which the officers tried to cover up by apprehending the Applicant.

5.3 The Revision Applicant cited various other reasons and conclusions in support of his case and prayed for setting aside the penalty and render justice.

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 facts of the case. At the outset the Government observes that the officers of DRI have acted impulsively, the passenger Shri Abubaker Sithikali was intercepted as soon as he stepped out of the Aircraft. It is therefore clear that the passenger was prevented from filing a declaration as required under section 77 of the Customs Act, 1962. The conspiracy theory of the Department also suffers from a lot of lacunae/ omissions. It is not understood as to why there was a necessity of using the toilet cabins and have coded knocks for the transfer of the gold?. Wouldn't it be simpler to just hand over the gold in the toilet. What if the arrivals crowded the Airport and 1<sup>st</sup> toilet cabin or the 2<sup>nd</sup> toilet cabin were occupied would the plan then be abandoned? As



then the coded knocks would not be reciprocated. It is also noted that two knocks are commonly used, and therefore a coded knock would normally have to be a threesome or more. It appears that the entire conspiracy is farfetched and having many such glitches and hiccups making the plan unviable. Even assuming that such a plan/ conspiracy was in existence, the officers could have made the interceptions after the transfer of the gold in the toilets.

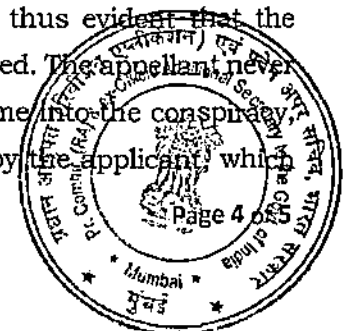
8. Further, the seizure of the gold has taken place at the aero bridge and according to the mahazar, the appellant has not received the gold from the passenger nor has he come into contact with him or the gold. The entire case on the applicant has originated from the statement given by Abubaker Sithikali in which he has stated that he was to proceed to Gents Toilet to hand over the gold to the Applicant. To put it shortly, there is no involvement of the applicant leading to seizure of gold. The passenger with gold was intercepted at the Bridge itself. The officers alongwith the passenger and the gold then proceeded to the toilet and intercepted the Applicant at the Toilet. However, by then the gold was already taken into possession by the officers, the intended plan of smuggling the gold out of Airport as a part of conspiracy did not take place. Government observes that the investigations conducted have established mensrea. But has remained mensrea, as the plan has not been executed. As the gold was seized before the Applicant came in the picture, the offence associated with the mensrea was not allowed to happen. The investigations revealed the conspiracy, But the conspiracy never attained fruition. The gold has been recovered before this conspiracy could play out. Therefore, the offence of the applicant remained unfulfilled and therefore in the area of speculation, and hence penalty cannot be imposed on an offence yet to be committed.

9. Government further observes for penalty under section 112 (a) of the Customs Act, 1962, the offence should have taken place. If the entire conspiracy was allowed to take place and the Applicant was caught with the gold or had he taken out the gold out of the Airport, penalty would have become applicable. The Adjudication Authority has imposed penalty under section 112( a) on the Applicant, The Section 112 (a) is reiterated below;

*112; Penalty for improper importation of goods, etc. —Any person,—*

*(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act,*

-- The Applicant never came in contact with the gold. It is thus evident that the applicant has not done anything in relation to the gold that was seized. The appellant never came into touch with the gold at all as it was seized before he came into the conspiracy and therefore there was that no act of commission or omission by the applicant, which



rendered the goods liable for confiscation. The subsequent actions of unravelling the conspiracy and implicating the applicant did not take place and therefore there is no reason for invoking Section 112 (a) of the Customs Act, 1962.

10. The revision application also informs that the Commissioner of Customs (Appeals) vide order C. Cus I No. 267/2016 dated 12.07.2016 has exonerated a co-applicant Shri K. Soundarajan, from the adjudication proceedings and the penalty imposed on him has been set aside on similar grounds as detailed above. In view of the above the government holds that section 112 (a) cannot be invoked in the case and penalty is not imposable. The penalty imposed is therefore required to be set aside.

11. Accordingly the penalty imposed on the applicant is set aside. The impugned Order in Appeal stands modified to that extent. Revision application is allowed on above terms.

12. So, ordered.

*(Signature)*  
S.C. 14  
(ASHOK KUMAR MEHTA)

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

ORDER No. 398/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 05.06.2018

To,

Shri P. Paulraj  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High Court, 2<sup>nd</sup> Floor,  
Chennai - 600 001.

**Attested**

*(Signature)*  
11/7/18  
**SANKARSAN MUNDA**  
Asstt. Commissioner of Custom & C. Ex.

Copy to:

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

