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SPEED POST

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

F.No. 373/204/B/16-RA / 906

Date of Issue 12/07/2018

ORDER NO. 407/2018-CUS (SZ)/ASRA/MUMBAI DATED 07.06.2018 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 Mohammed Jiffry Sulaiman Lebbe

Respondent : Commissioner of Customs, Cochin.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 106/2016-17 dated 29.08.2016 passed by the Commissioner of Customs (Appeals), Cochin.



ORDER

This revision application has been filed by Shri Mohammed Jiffry Sulaiman Lebbe (herein referred to as Applicant) against the order 106/2016-17 dated 29.08.2016 passed by the Commissioner of Customs (Appeals), Cochin.

2. Briefly stated facts of the case are that the Officers of Customs intercepted the applicant, A Sri Lankan national, at the Cochin International Airport on 19.09.2015. The Applicant was walking suspiciously and had not declared any goods. Examination of his six gold bars and one gold piece totally weighing 642.19 grams valued at Rs. 15,41,201/- (Rupees Fifteen Lakhs Forty one thousand Two hundred and one). The gold bars were pasted to the arch at the bottom of his feet and covered with socks and shoes.

3. The Original Adjudicating Authority, vide order No. 58/2015 dated 01.10.2015 absolutely confiscated the gold mentioned above under section 111(l) & (m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A Personal penalty of Rs. 1,00,000/- was imposed under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Cochin. The Commissioner of Customs (Appeals) Cochin, vide his order No. 106/2016-17. dated 29.08.2016 rejected the Appeal.

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 against law, weight of evidence and circumstances and probabilities of the case; The Appellate Authority has not applied his mind and glossed over the judgments and points raised in the Appeal grounds; The ownership of the gold is not disputed; The only allegation against him was that he did not declare the gold; The question of eligibility to bring gold does not arise for the foreigner; he was all along under the control of the officers at the red channel and had not crossed the green Channel; The option available under section 125 of the Customs Act, 1962 was not exercised



5.2 The Applicant further pleaded that as per the Hon'ble High Court of Andhra Pradesh in the case of Sheikh Jamal Basha vs GOI 1997 (91) ELT 277 (AP) has stated held that under section 125 of the Act is Mandatory duty to give option to the person found guilty to pay fine in lieu of confiscation.

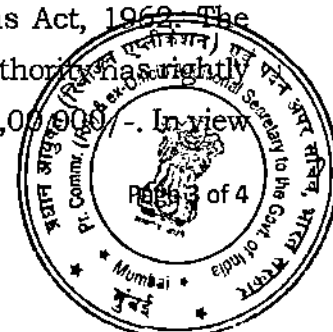
5.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing re-export, and prayed for allowing re-export and reduction of the redemption fine and reduce personal penalty and thus render justice.

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 submitted that the revision application be decided on merits. Nobody from the department attended the personal hearing.

7. The Government has gone through the case records it is observed that the Applicant did not declare the gold as required under Section 77 of the Customs Act, 1962. The gold bars and the gold piece were pasted to the arch at the bottom of his feet and covered with socks and shoes. This indicates that the Applicant was well aware that the gold is required to suffer customs duty and therefore it was ingeniously concealed under his feet. There is absolutely no doubt that the concealment was intelligently planned so as to avoid detection and evade Customs duty and to smuggle the gold into India. The aspect of allowing the gold for re-export can be considered when imports have been made in a legal manner and properly declared as per Section 77 of the Customs Act, 1962. If he was not intercepted before the exit, the Applicant would have again taken out the gold without payment of customs duty. The absolute confiscation of the gold is therefore necessary so as to deter and discourage such activities in future.

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8. The above acts have therefore rendered the 642.19 gms of seized gold liable for confiscation under Section 111 of Customs Act, 1962 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 a penalty of Rs. 1,00,000/- In view



of the above discussions, the Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.

9. The Government therefore finds the Appellate order 106/2016-17 dated 29.08.2016. passed by the Commissioner of Customs (Appeals) as legal and proper does not warrant any interference.

10. Revision Application is dismissed.

11. So, ordered.

Ashok Kumar Mehta
26/11

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

ORDER No. 407/2018-CUS (SZ) /ASRA/MUMBAI DATED 07.06.2018

To,

Shri Mohammed Jiffry Sulaiman Lebbe
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High Court, 2nd Floor,
Chennai - 600 001.

Copy to:

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

ATTESTED

Sankarsan Munda
27/7/18

SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

