



GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,

Mumbai-400 005

F.No. 373/215/B/16-RA/5629

Date of Issue 11.12.19

ORDER NO. 41/2019-CUS (SZ)/ASRA/MUMBAI DATED 13.11.2019 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 Kandoth Abdul Jaleel

Respondent : Commissioner of Customs, Bangalore.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No.472/2016 dated 3.06.2016 passed by the Commissioner of Customs (Appeals), Bangalore.

ORDER

This revision application has been filed by Shri Kandoth Abdul Jaleel (herein referred to as Applicant) against the order C.Cus-I No. 110/2014 dated 10.12.2014 passed by the Commissioner of Customs (Appeals), Bangalore.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Kandoth Abdul Jaleel at the Kempegowda International Airport, Bangalore Chennai on 09.02.2015 after his checked-in revealed dark images. A detailed scrutiny resulted in recovery of 137 nos of uneven gold pieces totally weighing 796.55 grams totally valued at Rs. 22,10,426/- (Rupees Twenty two Lakhs Ten thousand Four hundred and Twenty six). The gold was ingeniously concealed in stainless steel handles of cutlery sets and concealed in the caps of perfume bottles.

3. After due process of the law vide Order-In-Original No. 63/2016 dated 29.01.2016 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 7,00,000/- (Rupees Seven lacs) under Section 112 (a) and (b) of the Customs Act,1962. A penalty of Rs. 4,00,000/- (Rupees four lacs) 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. 472/2016 dated 30.06.2016 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 bad in law, opposed to facts and circumstances of the case; The Respondent has erred in arriving to a conclusion that the applicant had contravened the provisions of the Customs Act, 1962 and has passed the order on the basis of assumptions and presumptions; The proceedings were quasi judicial in nature and benefit of doubt should have been extended; The Respondent has erred in passing the order levying penalty and confiscating the gold seized; The

Applicant was not aware of the customs formalities and therefore a lenient view could have been taken in the matter; The applicant had no intention of violating The Customs Act; The respondent failed to notice that the applicant had not given any voluntary statement and the statement recorded to suit the convenience of the department and the signatures were forcibly obtained; The gold under seizure was overvalued for the purpose of statistics; The proceedings being quasijudicial in nature the benefit of doubt should have been extended in favour of the Applicant; The Applicant had clearly stated that the gold did not belong to him and it was carried for earning some money on this ground alone the proceedings were liable to be dropped; The Appellate authority erred in upholding the order of the lower authority; The lower authority erred in levying huge penalty unwarranted in the facts and circumstances of the case; The Appellate authority erred in not noticing that the Applicant was not a habitual offender.

5.2 The Revision Applicants prayed for setting aside the order of penalty in the interest of justice and equity.

6. A personal hearings in the case were scheduled on 1.11.2018, 17/18.12.2018 and 03.10.2019. However neither the Applicants nor the Respondents appeared for the hearing, therefore the case is being decided *ex parte* on merits.

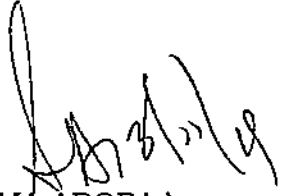
7. The Government has gone through the facts of the case, The gold was not declared as required under section 77 of the Customs Act, 1962 and therefore confiscation of the gold is justified. The facts of the case reveal that, after his baggage was subjected to a search, gold was recovered, concealed in stainless steel handles of cutlery sets and concealed in the caps of perfume bottles and therefore the allegation of ingenious concealment is proved. The said offence was committed in a premeditated and clever manner and clearly indicates *mens rea*, and that the Applicant had willfully hidden the gold ingeniously and if he was not intercepted before the exit, the gold would have been taken out without payment of customs duty. The Applicant in his statement has also submitted that he is not the owner of the gold and has 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. The impugned Revision Application is therefore liable to be dismissed.

9. Accordingly, The impugned Order in Appeal No. 472/2016 dated 30.06.2016 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. 4,00,000/- (Rupees Four lacs) 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 ARORA)
 Principal Commissioner & ex-officio
 Additional Secretary to Government of India

ORDER No. 41/2019-CUS (WZ) /ASRA/

DATED 13.11.2019

To,

Shri Kandoth Abdul Jaleel,
 S/o Shri Kunnan Kulath Abdu Rehiman, Meethal Kandoth House, Manjackle
 Mahe P.O., Pondichery State.

Copy to: _____

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