

REGISTERED
SPEED POST

सत्यमेव जयते

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

F.No. 373/107/B/16-RA / 3486

Date of Issue 29.07.2020

ORDER NO. ^{44/2020-} CUS (SZ)/ASRA/MUMBAI DATED ^{08.05.2020} ~~12.2019~~ OF THE GOVERNMENT
OF INDIA PASSED BY SHRI SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-
OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER
SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Ahmed Kabeer 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. 196/2016
dated 15.03.2016 passed by the Commissioner of Customs
(Appeals), Bangalore.



ORDER

This revision application has been filed by Ahmed Kabeer Moideen Kunhi (herein referred to as Applicant) against the order No. 196/2016 dated 15.03.2016 passed by the Commissioner of Customs (Appeals), Bangalore.

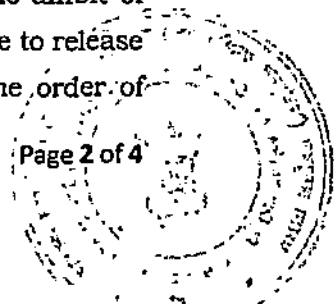
2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Ahmed Kabeer Moideen Kunhi at the Kempegowda International Airport, Bangalore on 22.02.2014. A personal search resulted in the recovery of 233.250 gms of gold in six gold pieces totally valued at Rs. 7,23,075/- (Rupees Seven Lacs Twenty three thousand and Seventy five). The gold was concealed in the elastic portion of his under wear.

3. After due process of the law vide Order-In-Original No. 39/2014 ADC dated 07.08.2014 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. 1,25,000/- (Rupees One lac Twenty Five thousand) under Section 112 (a) of the Customs Act, 1962. A penalty of Rs. 75,000/- (Rupees Seventy Five 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), The Commissioner (Appeals) vide his order No. 196/2016 dated 15.03.2016 rejected the appeal of the Applicant.

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

5.1 The order of the Commissioner (Appeals) is totally vitiated and liable to be set aside; The original authority has held that the Applicant has attempted to import the items in contravention of the conditions laid down under notification 12/2012-Cus dated 17.03.2012 clearly misconstruing the facts, as the Applicant had not claimed the benefit of the Notification; Therefore there is no merit in the impugned order holding that the goods are prohibited besides the import of gold is not barred otherwise by any law in the country; It is a settled legal position that the ownership of the gold lies with the person from whose possession such goods are seized; As per the relevant regulations an individual passenger is allowed to bring gold up to 5 kgs and for quantity exceeding the upper limit alone approval from the competent authority is required to be obtained; The said items do not fall in the ambit of restricted or prohibited goods and therefore the natural course would be to release the gold on redemption fine and penalty; Reliance was placed in the order of



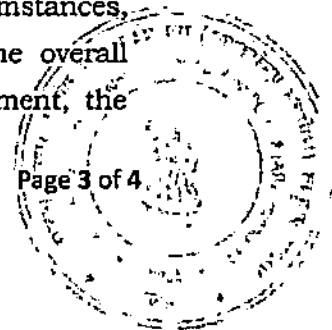
CESTAT in the case of Yakub Ibrahim Yusuf Vs Commissioner of Customs, Mumbai [2011 (263) ELT 685 (Tri-Mumbai, and the order of Madras High Court in the case of T. Elavarasan Vs Commissioner of Customs [2011 (266) ELT 167 (Mad)]; However they have been overlooked; In the era of liberalization, the market is flooded with imported gold due to relaxed Import policy and therefore every case of gold import cannot be treated as smuggling; Imposition of penalty of Rs. 2,00,000/- (Rupees Two lacs) is unsustainable brushed aside without cogent findings.

5.2 The Revision Applicants prayed for release of the gold after deducting penalties as impossible in the facts and circumstances of the case.

6. In view of the above, personal hearings in the case were scheduled on 30.08.2018, 03.10.2018 and 07.11.2019. Shri Pradyumna G. H. appeared on behalf of the Applicant and reiterated the grounds mentioned in the revision application. No one appeared on behalf of the Respondents.

FINDINGS AND ORDER

7. As the gold was not declared by the Applicant as mandated under section 77 of the Customs, Act, 1962, the confiscation of the gold is justified. In the current liberalized scenario, gold is no longer prohibited, it is a restricted item and therefore absolute confiscation of the gold cannot be justified. The quantity of impugned gold is small and was recovered from the undergarment of the applicant, though concealed, it cannot be termed as ingeniously concealed. The Applicant has no recorded previous offences. The Hon'ble CESTAT in the case of Yakub Ibrahim yusuf Vs Commissioner of Customs has held that Gold is liable to confiscation on import violation, However, it does not fall under the prohibited category and could not be confiscated absolutely. Though the Respondent may have carried the same on behalf of someone else, considering other facts it would be an exaggeration to term the applicant as a carrier as the quantity of the gold under import is small. The Tribunal, Mumbai in the case of V. P. Hameed Vs Collector of Customs, Bombay reported in 1994 (73) ELT 425 Tri.Bom has upheld the confiscation of the undeclared gold and allowed its release on redemption fine in view of liberalized policy. The Apex court in the case of Hargovind Das K. Joshi v/s Collector of Customs reported in 1992 (61) E.L.T. 172 (S.C.), has pronounced that a quasi judicial authority must exercise discretionary powers in judicial and not arbitrary manner and remanded the case back for consideration under section 125(1) of the Customs Act, 1962. The section also allows the gold to be released to the person from whose possession the goods have been recovered, if the actual owner of gold is not known. Under the circumstances, absolute confiscation in the case cannot be justified and considering the overall circumstances of the case in the wake of liberalized policy of the Government, the Appellate order is liable to be set aside.



9. In view of the above facts, Government sets aside the Appellate order and allows release of the gold on payment of Redemption fine of Rs. 2,00,000/- (Rupees Two Lacs). There are no grounds for reduction of penalty under section 112 of the Customs Act,1962. Penalty imposed is commensurate to the offence committed. 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. 75,000/- (Rupees Seventy Five thousand) imposed under section 114AA of the Customs Act,1962 is set aside.

10. Revision application is allowed on above terms.

11. So, ordered.


(SEEMA ARORA)

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

ORDER No. ~~44~~/2020-CUS (SZ) /ASRA/MUMBAI DATED ~~08.05.2020~~.

To,

1. Shri Ahmed Kabeer Moideen Kunhi, S/o Moideen Kunhi, Chattanchal Kaniyadukkam, Shereef Manzil, Thekkil PO, Chengala via, Kasargod, Kerala.
2. The Commissioner of Customs, Kempegowda International Airport, Bangalore.
3. Shri Pradyamma G. H. Advocate, BVC & Co. No. 371, 1st Floor, 8th Main, Sadashiv Nagar, Bangalore - 560080.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

ATTESTED


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

