



GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

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

Mumbai-400 005

F.No. 373/106/B/16-RA

3395

Date of Issue

28.07.2020

ORDER NO. 46/2020-CUS (SZ)/ASRA/MUMBAI DATED 11/07/2020 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 Basheed Choori Abdul

Respondent : Commissioner of Customs, Bangalore.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 308/2016 dated 31.03.2016 passed by the Commissioner of Customs (Appeals), Bangalore.



ORDER

This revision application has been filed by Shri Basheed Choori Abdul (herein referred to as Applicant) against the Order-in-Appeal No. 308/2016 dated 31.03.2016 passed by the Commissioner of Customs (Appeals), Bangalore.

2. The Officers of Customs intercepted Shri Basheed Choori Abdul at the Mangalore International Airport, on 04.02.2014 on suspicion as his checked in baggage showed some unusual images during scanning. The baggage was taken for scrutiny as his averments differed with the scanned images. On scrutiny of his checked in baggage the officers recovered a double electric hotplate stove which when opened led to the recovery of gold in coil form totally weighing 999.650 grams totally valued at Rs. 29,78,957/- (Rupees Twenty Nine Lakhs Seventy eight thousand Nine hundred and Fifty seven). The gold was ingeniously concealed as wire coils in the hot plate.

3. The Original Adjudicating Authority vide its Order-In-Original No. 81/2014 JC dated 28.11.2014 the ordered absolute confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 3,00,000/- (Rupees Three lacs) under Section 112 (a) and (b) of the Customs Act,1962. A penalty of Rs. 1,50,000/- (Rupees One lac 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. 308/2016 dated 31.03.2016 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 neither legal nor proper and hence liable to be set aside with consequential relief to the Applicant; The Applicant had stayed abroad continuously for a period of one year; There are no findings in the Appellate order that the gold in question was not purchased out of illegal proceeds; No prior intelligence was received by the department that the gold was being attempted to be smuggled without the payment of customs duties; The Applicant was intercepted by the Customs officers even before he proceeded to the Customs counter to enquire about Customs formalities; 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; 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 is 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)]; 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. 4,50,000/- (Rupees Four lacs Fifty thousand) is without justification;

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

6. A personal hearing 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. The facts of the case reveal that, the impugned gold was recovered only after the Applicants averments differed with the scanned images of his checked in baggage. The gold was ingeniously concealed in coil form in the double electric hotplate stove carried by the Applicant. The allegation of ingenious concealment is therefore proved and clearly indicates mensrea. The Applicant had willfully hidden the gold ingeniously, with the intention of avoiding customs duty and if he was not intercepted and searched before the exit, the gold would have been taken out without payment of customs duty. The Applicant has relied on the 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)], the facts of these cases differ from those of the present in as much as the gold was not ingeniously concealed in both of these cases. 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 Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed penalty. The Government therefore holds that there is no necessity for interfering with Order of the Appellate Authority. The views of the Government are reflected by the Hon'ble High Court of Madras in the case of Commissioner of Customs Vs Samynathan Muneesan [2009 (247) ELT 21 (Mad)] and is upheld by the Hon'ble Supreme Court [2010 (25) ELT A15 (SC)]. The impugned Revision Application is therefore liable to be dismissed:-



9. Accordingly, the absolute confiscation of the impugned gold and the penalty imposed under section 112 (a) 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. 1,50,000/- (Rupees One lac 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 ARORA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 46/2019 CUS (SZ) /ASRA/MUMBAI

DATED 12.2019 11/05/2020.

To,

Shri Basheed Choori Abdul, S/o Abdul Rahiman Choori Abdulla, Bushara Manzil, Jeelani Nagar, Uliyathadka, Madhur PO, Kasargod, Kerala- 671124.

Copy to:

1. The Commissioner of Customs, Kempegowda International Airport, Bangalore.
2. Shri Pradyamma G. H. Advocate, BVC & Co. No. 371, 1st Floor, 8th Main, Sadashiv Nagar, Bangalore - 560 080.
3. Sr.. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

ATTESTED

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

