

373/176/B/16-RA

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GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

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

Mumbai-400 005

F.No. 373/176/B/16-RA

13242

Date of Issue

3/11/2020

ORDER NO. 47 /2020-CUS (SZ)/ASRA/MUMBAI DATED 11/05/2020 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 Abdul Nizar Abdul Kader

Respondent : Commissioner of Customs, Bangalore.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 363/2016 dated 21.04.2016 passed by the Commissioner of Customs (Appeals), Bangalore.



ORDER

This revision application has been filed by Shri Abdul Nizar Abdul Kader (herein referred to as Applicant) against the Order-in-Appeal No. 363/2016 dated 21.04.2016 passed by the Commissioner of Customs (Appeals), Bangalore.

2. The Officers of DRI on receipt of credible information intercepted Shri Abdul Nizar Abdul Kader at the Mangalore International Airport, on 06.04.2014. On enquiry the Applicant denied carrying any dutiable goods. On scrutiny among other checked in baggage the officers recovered a Popcorn maker, Digital Receiver, a Steamer cleaner and a Car stereo all these items were unusually heavy. A detailed examination resulted in recovery of cut gold pieces and wires totally weighing 3206.64 grams totally valued at Rs. 93,63,389/- (Rupees Ninety three Lakhs Sixty three thousand Three hundred and Eighty nine). The gold was ingeniously concealed as wire around the coil of the Popcorn maker, Cut gold bits in capacitors of the Digital Receiver, as cut gold pieces in the housing case of the motor of the Steamer cleaner and as cut gold pieces in the capacitors of the circuit board of the Car stereo. The checked in baggage was entered in his cousin sister's name Smt. Khadeejathul Fousia Kayarkatte as they were travelling together.

3. The Original Adjudicating Authority vide its Order-In-Original No. 18/2015 JC dated 05.05.2015 the ordered absolute confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 10,00,000/- (Rupees Ten lacs) under Section 112 (a) and (b) of the Customs Act,1962. A penalty of Rs. 5,00,000/- (Rupees Five lacs) was also imposed under section 114AA of the Customs Act,1962. The Original Adjudicating Authority also imposed penalty on Smt. Khadeejathul Fousia Kayarkatte of Rs. 10,00,000/- (Rupees Ten lacs) under Section 112 (a) and (b) of the Customs Act,1962. A penalty of Rs. 5,00,000/- (Rupees Five 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. 363/2016 dated 21.04.2016 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 totally vitiated and liable to be set aside; 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; The reliance on the Supreme Courts orders Samynathan Murugesan Commissioner [2010(254) ELT 15 (SC) as well as Omprakash Bhatia Vs



Commissioner of Customs [2003 (155) ELT 423 (SC) are clearly distinguishable in as much as the Applicant had carried gold in permissible quantities; 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. 15,00,000/- (Rupees Fifteen Lacs) 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 hearings in the case were scheduled on 12.11.2018, 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 baggage was subjected to a search. On initial enquiry the Applicant denied having any dutiable goods. The gold was ingeniously concealed in various electronic items brought by the Applicant. It was concealed as wire around the coil of the Popcorn maker, as cut gold bits in capacitors of the Digital Receiver, as cut gold pieces in the housing case of the motor of the Steamer cleaner and as cut gold pieces in the capacitors of the circuit board of the Car stereo. 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)], these 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 Government therefore holds that there is no necessity for referring with Order of the Appellate Authority. The Original Adjudicating Authority has



rightly confiscated the gold absolutely and imposed penalty. The views of the Government are echoed by the Hon'ble High Court of Madras in the case of Commissioner of Customs Vs Samynathan Murugesan [2009 (247) ELT 21 (Mad)] and is upheld by the Hon'ble Supreme Court [2010 (254 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. 5,00,000/- (Rupees Five 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. 47/2020-CUS (SZ) /ASRA/MUMBAI DATED 11.05.2020.
12.2019

To,

Shri Abdul Nizar Abdul Kader, H. No. IV/409-K.A.S. House Arikady Kumbala Post,
Kasargod Dist., Kerala.

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 - 560080.
3. Sr.. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

ATTESTED

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

