

373/102/B/17-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. 373/102/B/17-RA

Date of Issue 02/08/2018

ORDER NO. 543/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 24.07.2018 OF THE
GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MBHTA , PRINCIPAL
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF
INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Shoukath Kunnoth

Respondent : Commissioner of Customs(Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal C. Cus I No. 87/2017
dated 15.05.2017 passed by the Commissioner of Customs (Appeals
II) Chennai.



ORDER

This revision application has been filed by Shri Shoukath Kunnoth (herein after referred to as the Applicant) against the order in appeal no C. Cus No. 87/2017 dated 15.05.2017 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case is that the applicant, arrived at the Chennai Airport on 15.10.2016. He was intercepted by the officers as he attempted to walk through the Green channel without declaration. Examination of his baggage and person resulted in the recovery of 15 cartons of cigarettes and two adhesive tape wrapped packages each containing two gold bars each totally weighing 466.4 grams valued at Rs.14,11,793/- (Rupees Fourteen lakhs Eleven thousand Seven hundred and Ninety Three) concealed in the socks worn by the Applicant.

3. The Original Adjudicating Authority vide Order-In-Original No. 202 /2016-17 – Airport dated 22.02.2017 ordered for absolute confiscation of the impugned gold and cigarettes under Section 111 (d), and (l) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 1,40,000/- under Section 112 (a) of the Customs Act. A further penalty of Rs. 5,000/-was also imposed under Section 114AA of the Customs Act,1962,

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C.Cus I No. 87/2017 dated 15.05.2017 set aside the penalty imposed under section 114AA of the Customs Act,1962 and upheld the rest of order in original.

5. The applicant has filed this Revision Application interalia on the following grounds that;

5.1 The order of the appellate authority is bad in law, weight of evidence and probabilities of the case; that gold was not a prohibited item and as per liberalized policy can be released on fine and penalty; The Appellate Authority has not applied his mind and glossed over the judgments and points raised in the Appeal grounds; The Applicant had returned to India after a prolonged stay of one year, thus he is clearly eligible for concessional rate of duty; the applicant in his statement has submitted that the gold was given to him by his brother for his marriage, the adjudication authority has however concluded that he brought the gold for monetary reasons; he has sufficient funds in his bank account in Sharjah for paying duty in foreign exchange; Gold is a restricted item and not prohibited goods;

5.2 The Applicant further pleaded that as per the Applicant further pleaded that as per the judgement by CEGAT South Zonal Bench , Chennai in the case of Shaikh



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Shahabuddin vs Commissioner of Customs Chennai has held that absolute confiscation without giving the option of redemption for gold concealed in shaving cream tubes is not proper, and the case was remanded for denovo adjudication; the case of Peringatil Hamza vs Commissioner of Customs , Mumbai 2014 (309) E.L.T. 259(Tri- Mumbai in the seizure of Rs. 24 lakhs of currency the redemption fine of 10% and penalty of Rupees 2 lakhs was found appropriate.

5.3 The Revision Applicant prayed that the Hon'ble Revision Authority may be pleased to set aside both the lower authorities orders and permit him to re-export the gold OR release the same on concessional rate of duty.

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 cited the decisions of GOI/Tribunals where redemption fine and personal penalty was reduced and requested for the same. Nobody from the department attended the personal hearing.

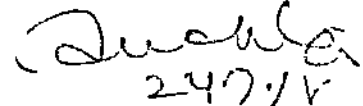
7. The Government has gone through the case records it is observed that the Applicant had concealed gold bar in the socks worn by him so as to avoid detection and evade Customs duty and smuggle the gold into India. The aspect of allowing the gold for re-export can be considered when imports have been made in a legal manner. This is not a simple case of mis-declaration. In this case the Applicant has blatantly tried to smuggle the gold into India in contravention of the provisions of the Customs, 1962. The release on concessional rate of duty also cannot be entertained as the Applicant has not declared the gold as required under Section 77 of the Customs Act, 1962. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and that the Applicant had no intention of declaring the gold to the authorities and if he was not intercepted before the exit, the Applicant would have taken out the gold pieces without payment of customs duty.

8. The above acts have therefore rendered 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. 1,40,000/-. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.

9. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C. Cus. No. 87/2017 dated 15.05.2017 passed by the Commissioner Customs (Appeals), is upheld as legal and proper.



10. Revision Application is dismissed.
11. So, ordered.


24/7/V
(ASHOK KUMAR MEHTA)

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

ORDER No. ⁵⁴³72018-CUS (SZ) /ASRA/MUMBAI. DATED 24.07.2018

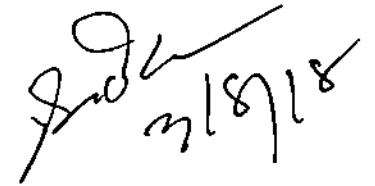
To,

Shri Shoukath Kunnoth
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, Anna International Airport, Chennai.
2. The Commissioner of Customs (Appeals), Custom House, Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

ATTESTED


31/8/18

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

