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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No. 373/283/B/14-RA | 11/05

Date of Issue 03/08/2018

ORDER NO. 554/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 26.07.2018
OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR
MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION
129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri S. Paneer Selvam

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. C.
Cus No. 860/2014 dated 19.05.2014 passed by the
Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri S. Paneer Selvam (herein referred to as Applicant) against the order no 860/2014 dated 19.05.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 20.11.2013. He was intercepted and examination of his baggage and person resulted in the recovery of gold bars/biscuits and jewelry totally weighing 400 gms valued at Rs. 11,19,108/- (Rupees Eleven lakhs Nineteen thousand one hundred and eight). The gold was indigenously concealed in the circuitry of the rice cooker and in the cavity of the emergency light carried by the Applicant in his baggage.

3. After due process of the law vide Order-In-Original No. 1352/2013 dated 08.01.2014 the Original Adjudicating Authority ordered absolute confiscation of the impugned gold under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, and imposed penalty of Rs. 1,10,000/- (Rupees one lakh Ten thousand) under Section 112 (a) of the Customs Act, 1962. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 860/2014 dated 19.05.2014 rejected the appeal of the applicant.

4. The Revision Application has been filed interalia on the following grounds that

4.1 The order of the authorities is against the law and weight of evidence and probabilities of the case; The statement obtained from the passenger that he did not declare the gold is wrong and obtained with threat and coercion; The retraction of the Applicant stating that the gold was purchased for his daughters marriage was not considered; The section 125 of the Customs Act, 1962 clearly states that the option of redemption is mandatory even for prohibited goods ; Gold is not prohibited in any of the notifications and the circulars under the FT&DR Act.; The option to re-ship such goods has been extended by the very same authority, and as per the law of parity the order has to be set aside.

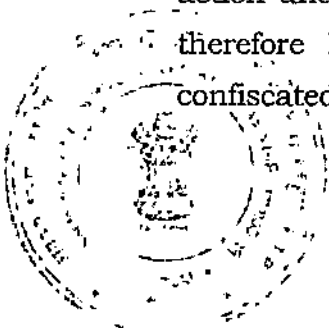


4.2 The Revision Applicant cited case laws in his defense and prayed for setting aside the order in original and release the gold for re-export on redemption fine and penalty and pass such reliefs as deemed fit and thus thereby render justice.

5. A personal hearing in the case was scheduled to be held on 03.07.2018, the Advocate for the respondent Shri T. Chezhiyan attended the hearing, he re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed and requested for a lenient view to be taken in the matter. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. A written declaration of gold was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and had he not been intercepted he would have gone without paying the requisite duty, under the circumstances confiscation of the gold is justified. Government observes that the Applicant had concealed gold jewelry in the bottom portion of the circuitry of the rice cooker and in the cavity of the emergency light carried by the Applicant so as to avoid detection and evade Customs duty and smuggle the gold into India. This is not a simple case of mis-declaration, but a case of ingenious concealment. 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.

7. 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. The Government



also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.

8. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C. Cus. No. 860/2014 dated 19.05.2014 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

9. Revision Application is dismissed.

10. So, ordered.

(Signature)
26.7.18

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. ⁵⁵⁴/2018-CUS (SZ) /ASRA/MUMBAI DATED 26.07.2018

To,

Shri S. Paneer Selvam
c/o Shri T. Chezhiyan
Advocate.
No. 8 Eldams Road,
Alwarpet,
Chennai-600 018.

ATTESTED

(Signature)

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

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.

