

REGISTERED  
SPEED POST

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

F.No. 373/132/B/15-RA

Date of Issue 10/08/2018

ORDER NO. 574/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 30.07.2018 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 Mohammed Ribai

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-I No. 71/2014 dated 20.11.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Mohammed Ribai (herein referred to as Applicant) against the Order in Appeal C. Cus No. 71/2014 dated 20.11.2014 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 12.05.2014. He was intercepted and examination of his hand baggage resulted in the recovery of two rectangular grey color coated gold sheets weighing 404 gms valued at Rs. 12,10,384/- (Rupees Twelve lakhs Ten thousand Three hundred and Eighty four).

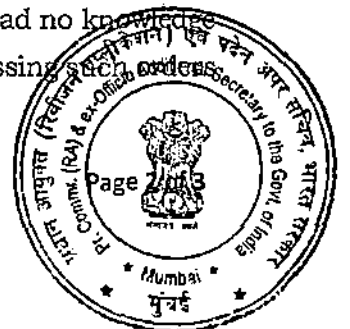
3. After due process of the law vide Order-In-Original No. 645/2014 -AIU dated 08.07.2014 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) and e, (l), (m) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 1,50,000/- under Section 112 (a) 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 No. 71/2014 dated 20.11.2014 rejected the appeal of the applicant.

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

4.1 The order of the authorities is wholly unfair, unreasonable, unjust, biased, arbitrary and contrary to legal principles; The Commissioner (Appeals) should have considered that the applicant was a victim of circumstances but without hesitation he stood with the facts; The custom officials have not supplied the applicant with any documents relied upon: The Commissioner (Appeals) ought to have noticed in the absence of the existence of the gold, it is impossible to conclude that the applicant was to declare the concealed gold under section 77 of the customs Act, 1962; In the case of Chittilappally Sebastian Babu vs Asst. Collector, Trivandrum reported in 2011(273) ELT 380 (Ker HC) wherein benefit of doubt was given when the petitioner was duped to sending his baggage as unaccompanied baggage by those who promised to help him, and it resulted in the recovery of 67 gold bars; It is a well settled principal in law that the penalty imposed has to be proportionate to the quantum of penalty; The Applicant submits that he was a victim of circumstances without being guilty of the offence and without any monetary compensation and relies on the reported case Law 1995 (&&0 ELT 333 (Tri) and 1987(31) 392 (Tribunal) wherein benefit of doubt was expended and a lenient view taken.

4.2 The Revision Applicant cited case laws in his defense and as he had no knowledge of carrying the gold and as his financial condition is not good prays for passing such orders as deem fit in the interest of justice.



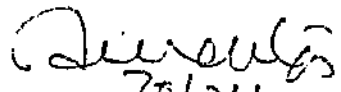
5. A personal hearing in the case was scheduled to be held on 18.07.2018, the Advocate for the respondent Shri B. Kumar attended the hearing, he re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals and requested for a lenient view to be taken in the matter. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. The applicant in his Revision Application has submitted that he was not aware that the grey metal pieces handed over to him to be carried to India was gold and therefore a written declaration of golds was not made by the Applicant as required under Section 77 of the Customs Act, 1962. Government further observes that the gold has been absolutely confiscated. The Applicant also has not claimed the gold and has prayed for reduction of penalty. The facts of the case therefore justify reduction of penalty and the Government is inclined to accept the plea.

7. The Government upholds the absolute confiscation of the gold. The penalty imposed on the Applicant is reduced from Rs. 1,50,000/- ( Rupees One lakh Fifty thousand ) to Rs. 1,00,000/- ( Rupees One lakh ) under section 112(a) of the Customs Act, 1962.

8. The impugned Order in Appeal is modified as detailed above. Revision application is partly allowed on above terms.

9. So, ordered.

  
 20/7/18  
 (ASHOK KUMAR MEHTA)  
 Principal Commissioner & ex-officio  
 Additional Secretary to Government of India

ORDER No. 574/2018-CUS (SZ) /ASRA/ MUMBAI

DATED 30.07.2018

To,

Shri Mohammed Ribai  
 c/o M/s L. K. Associates  
 "Time Tower" Room No. 5, II Floor,  
 169/84, Gengu Reddy Road,  
 Egmore, Chennai- 600 008.

**ATTESTED**

  
 10/8/18  
**S.R. HIRULKAR**  
 Assistant Commissioner (R.A.)

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.

