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SPEED POST

सत्यमेव जयते

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. 373/385/B/14-RA | 2018 | Date of Issue 10/08/2018

ORDER NO. 586/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 25.07.2018 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 Nagoor Hanifa

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 No. 1415/2014 dated 05.08.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Nagoor Hanifa (herein after referred to as the Applicant) against the order no C. Cus No1415/2014 dated 05.08.2014 passed by the Commissioner of Customs (Appeals), Chennai.

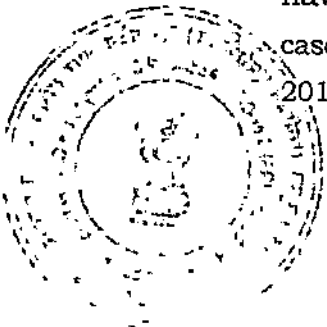
2. Briefly stated the facts of the case is that the applicant, arrived at the Chennai Airport on 27.12.2013. He was intercepted by the officers as he attempted to walk through the Green channel without declaration. Examination of his hand baggage resulted in the recovery of two gold bars covered with black adhesive tape concealed in the two Hitachi multimedia projectors weighing 200 grams valued at Rs. 5,95,800/- ( Rupees Five lakhs Ninety Five thousand and Eight hundred ).

3. The Original Adjudicating Authority vide Order-In-Original No. 1538/2013 dated 28.02.2014 ordered for absolute confiscation of the impugned gold 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. 60,000/- under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C.Cus No. 1415/2014 dated 05.08.2014 rejected the appeal of the applicant.

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 both the Respondents failed to see that the applicant was a victim of circumstances and with any hesitation stood by the facts and never retracted his statements; Gold is neither prohibited nor restricted for eligible passengers; In the impugned case the gold was kept concealed in the projectors by the persons who requested the Applicant to carry the same and the applicant was not aware of the same; a true declaration not was made by the Applicant as he was unaware that the goods were liable for confiscation as he did not have any knowledge of the gold kept concealed in the projectors; 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



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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; In this case too the gold was kept concealed without the knowledge of the Applicant; The Commissioner should have considered the quantum of penalty to be as per the role paid by the individual; There are a plethora of case law where the authorities were considerate in reducing fine and penalties.

6. 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 reiterated 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.

7. The Government has gone through the case records it is observed that the gold bars were concealed in the Hitachi projectors so as to avoid detection and evade Customs duty and smuggle the gold into India. 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 said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and that there was 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 bars without payment of customs duty.

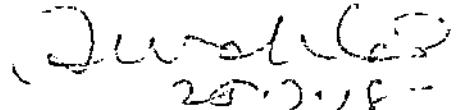
8. The above acts have therefore rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed a penalty of Rs. 60,000/- on the Applicant. The 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. 1415/2014 dated 05.08.2014 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.



10. Revision Application is dismissed.

11. So, ordered.

  
(ASHOK KUMAR MEHTA)

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

ORDER No. <sup>586</sup>/2018-CUS (SZ) /ASRA/MUMBAI

DATED 25.07.2018.

To,

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

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**



**S.R. HIRULKAR**  
Assistant Commissioner (R.A.)

