

REGISTERED
SPEED POST



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

F.No. 373/215/B/16-RA/5692

Date of Issue 11.12.19

ORDER NO. 60/2019-CUS (SZ)/ASRA/MUMBAI DATED 10.12.2019 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 Pedada Raminaidu

Respondent : Pr. Commissioner of Customs, Hyderabad.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. HYD-CUS-000-APP-148-17-18 dated 26.03.2018 passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad.

ORDER

This revision application has been filed by Shri Pedada Raminaidu (herein referred to as Applicant) against the order No. HYD-CUS-000-APP-148-17-18 dated 26.03.2018 passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad.

2. The officers of DRI acting on intelligence, intercepted two persons by name Shri K.Bhaskar Reddy and Shri Pedada Raminaidu, the appellant in this case who were employees in the security wing of GMR Hyderabad International Airport Ltd on 25.05.2015 in the car parking area of the airport arrival while they were handing over imported gold in packages to Shri Mohammed Mazhar Ali. On the basis of further investigation made, it was found that the said gold totally weighing eight kgs valued at Rs. 2,20,00,000/- (Rupees Two crores Twenty lacs) alongwith Rs. 3,50,000/- (Three lacs Fifty thousand) had been brought by an international passenger Shri Mohammed Zubair Shabbir Gaima who arrived from Dubai in the flight EK 524 which landed on 25.05.2015 post-midnight and that the gold had been smuggled out of the airport area in connivance with the appellant and Shri K.Bhaskar Reddy. Investigation had found that the appellant along with Shri K.Bhaskar Reddy had collected gold from the passenger Shri Mohammed Zubair Shabbir Gaima in the toilet area of the arrival area before immigration offices and that the said gold was being handed over to the Shri Mohammed Mazhar Ali in the car parking area.

3. After due process of the law vide Order-In-Original No. 05/2017-Adjn.Cus(ADC) dated 31.01.2017 the Original Adjudicating Authority ordered absolute confiscation of the gold and currency under Section 111 (d) (i) 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 on each of the accused including the Applicant.

4. Aggrieved by this order the applicant filed an appeal with the Commissioner of Customs (Appeals), Commissioner (Appeals) vide his order No. HYD-CUS-000-APP-148-17-18 dated 26.03.2018 passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad.

5. Aggrieved with the above order the Applicant, has filed this revision application interalia on the grounds that;

5.1 The appellate authority's conclusion that the appellant has played considerably a major role to attract equivalent penalty at par with other co noticees, is not tenable because the appellant has not smuggled the gold from Dubai to India but only helped in clearing the confiscated gold; The appellate authority, has not even taken into consideration that the appellant is not the owner of the confiscated gold nor a subsequent beneficiary; Applicant received only a meagre amount as a remuneration towards the limited activity of taking gold from the immigration area to handover at the car parking zone, which activity is mainly undoubtedly a minor role when compared to the activity of bringing gold all the way from Dubai to India, with an intent to smuggle without payment of the customs duties; The appellate authority vide para 7 of his order referred to Para 52.1 of the Order in Original holding that the original authority has incidentally referred to previous instances of gold smuggling but not considered the said offences while determining the quantum of penalty; However, vide Para 52.3 of the Order in Original, the original authority specifically mentioned that "In the instant case as per the Show cause notice admittedly role played by him is that on many occasions he received the smuggled gold from international passengers in side the customs area by misutilizing his official position and removed the same to outside the Air Port by circumventing the customs to handover to Mazhar Ali which is crux of the offence and led to evasion of customs duty, hence the noticee's contention that he played a limited role is not substantiated." From this observation of the original authority, the finding of the appellate authority that the past activities were not taken into account, is not based on the actual findings of the original authority; In view of the fact that the original authority has imposed the of penalty on the appellant certainly

based on the alleged past activities of the gold smuggling, which department has failed to establish with cogent evidence; it is a settled law that mere statements without corroborative evidence cannot be treated as conclusive evidence. Therefore, imposing penalty without supporting evidence of past activities is not proper; The ruling of the Hon'ble Tribunal, Mumbai in the case of Suresh Gangaram Hole Vs Commissioner of Customs (Airport) Mumbai has held that penalty has to be imposed proportionate to the role played; The appellate authority has not however considered the ratio held in the above mentioned ruling and the findings; The appellant also submits that following the seizure and subsequent arrest, he lost his job in the Air Port and presently having no employment and facing financial hardships and finding it very difficult to make both ends meet.

5.2 Taking in to consideration the plight of the appellant, it is requested to take a sympathetic view and reduce the huge penalty of Rs. 10 lakhs.

6. A personal hearings in the case were scheduled on 17.10.2019 which was attended by the Applicant. The Applicant pleaded that he was an assistant to Shri Bhaskar Reddy, and does not have a job and is unable to pay the penalty. He admitted that it was a mistake that he regrets and prayed for reduction of penalty. The Respondents did not appear for the hearing.

7. The Government has gone through the facts of the case, The Applicant does not dispute the fact that he was involved the smuggling of the gold. His only prayer is that he was a minor accomplice and received only a meagre amount as a remuneration towards the limited activity of taking gold from the immigration area to handover at the car parking zone, and that this was minor role when compared to the activity of bringing gold all the way from Dubai to India, with an intent to smuggle without payment of the customs duties. He was not the owner of the gold and the penalty imposed has to be proportionate to the role played.

8. In addressing the issue the Government observes that the Applicant along with Shri Bhaskar Reddy has actively connived with the International passenger and misused their access to enter the restricted area of the Airport like international arrival area to assist in the removal of the gold out of the airport clandestinely avoiding the payment of customs duties without the knowledge of the Customs authorities. The Order in Original states Shri Bhaskar Reddy and Shri Ramanaidu had been assigned official duties in an entirely different area of the airport but used their access to the restricted areas even during their off duty hours. Investigations conducted by the officers of DRI on the SIM cards of the Applicant also reveal that the Applicant and Shri Bhaskar Reddy were in regular contact with Shri Mohammed Zubair Shabbir Gaima, the person who brought the gold from Dubai, prior to his flight landing in Hyderabad, and as planned, they had made themselves available near the toilet area at the International arrival area and collected the gold from the International passenger Shri Mohammed Zubair Shabbir Gaima. The Applicant and Shri Bhaskar Reddy were intercepted by the DRI officers, after they removed the gold out of the Airport and were in the process of handing it over to Shri Mohammed Mazhar Ali in the parking Area of the Airport. The evidences collected through CCTV cameras, calls made through SIM card, the panchanamas recorded and other evidences clearly implicate the Applicant in the smuggling operation. The facts of the case reveal that the smuggling operation would not have been possible without the active involvement of the Applicant. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and that the Applicant is therefore liable to penal action under section 112 of the Customs Act, 1962. The facts of the case reveal that the smuggling operation would not have been possible without the active involvement of the Applicant. The role played by the Applicant is evident on record and no less important as compared to the other accused as pleaded by him. His plea of receiving meagre payment for his role does not in any way lessen his involvement. Further, the facts of the case also reveal that the Applicant was also involved in similar offences earlier.

9. The above acts have therefore rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. The Government holds that the Appellate Authority has rightly upheld the order of the Original

Adjudicating Authority. The quantum of penalty is also appropriate and proportional to the role played. The impugned Revision Application is therefore liable to be dismissed.

10. Revision application is accordingly dismissed.

11. So, ordered.

(SEEMA ARORA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 60/2019-CUS (WZ) /ASRA/

DATED 01.12.2019

To,

Shri Pedada Raminaidu,
S/o Shri Adinarayana, Resident of Kesavaraopeta village, SM Puram, P.O.
Etoherla Mandal, Srikakulam District, Andhra Pradesh.

Copy to:

1. The Pr. Commissioner of Customs, Rajiv Gandhi International Airport, Shamshabad, Hyderabad.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.