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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. 373/85/B/17-RA

1460

Date of Issue 04/09/2018

ORDER NO. <sup>646</sup>/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 28.08.2018 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 Gafoor Khan Ismath Batcha

Respondent : Commissioner of Customs(Airport), Visakhapatnam.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. Viz-CUSTOM-000-APP-143-16-17 dated 24.03.2017 passed by the Commissioner (Appeals) Visakhapatnam.



ORDER

This revision application has been filed by Shri Gafoor Khan Ismath Batcha (herein after referred to as the Applicant) against the order No. Viz-CUSTOM-OOO-APP-143-16-17 dated 24.03.2017 passed by the Commissioner (Appeals) Visakhapatnam.

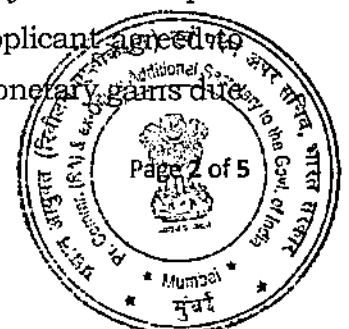
2. Briefly stated the facts of the case is that the officers of the Directorate of Revenue Intelligence intercepted 57 passengers on specific intelligence that these passengers would be attempting to smuggle gold pieces concealed in electronic items. The applicant, one of the above 57 passengers, was thus intercepted by the officers as he attempted to walk through the Green channel without declaration. Examination of his baggage resulted in the recovery of gold weighing 602 grams valued at Rs. 16,37,440/- (Rupees Sixteen lakhs Thirty seven thousand and Four hundred and forty).The gold was indigenously concealed in a Microwave oven brought as checked in baggage.

3. The Original Adjudicating Authority vide Order-In-Original No. 26/2016 dated 18.05.2016 ordered for absolute confiscation of the impugned gold under Section 111 (d), (i) and (l) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 1,64,000/- under Section 112 (a) of the Customs Act. A penalty of Rs. 82,000/- under Section 114AA of the Customs Act, 1962 was also imposed on the applicant.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) Visakhapatnam who vide Order-In-Appeal No. Viz-CUSTOM-OOO-APP-143-16-17 dated 24.03.2017 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 unjust, unfair unfounded and totally devoid of merits; Both the authorities failed to see that the applicant was a victim of circumstances and was conned into carrying the Amplifier as a genuine item; The department has not produced any evidence apart from the involuntary statement of the Applicant; The Applicant agreed to carry the item without the knowledge of gold, for minor monetary gains due





the gold without payment of customs duty. The Government also observes that the Applicant, in his statements has admitted that he was aware that gold was concealed in the Microwave Oven, and he agreed to smuggle it for monetary consideration. Government however holds that no penalty is imposable under section 114AA of the Customs Act,1962 as this provision is not attracted in baggage cases.

9. 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. 1,64,000/- ( Rupees One lakh Sixty four thousand) on the Applicant. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority. The penalty of Rs. 82,000/- (Rupees Eighty two thousand ) imposed under section 114AA of the Customs Act,1962 has been incorrectly imposed, the same is therefore set aside.

10. The impugned Order in Appeal is modified as detailed above. Revision Application is partly allowed to that extent.

11. So, ordered.

*(Signature)*  
28.8.18

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

ORDER No. <sup>646</sup>/2018-CUS (SZ) /ASRA/MUMBAI

DATED 28.08.2018

To,

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

**ATTESTED**

*(Signature)*  
28/8/18  
**S.R. HIRULKAR**  
Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner of Customs, International Airport, Visakhapatnam.
2. The Commissioner (Appeals), Visakhapatnam.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

