



सत्यमेव जयते

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

F.No. 371/14/B/17-RA | 3500

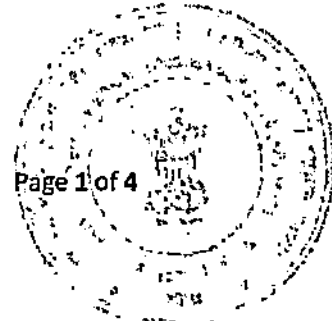
Date of Issue 29.08.2020

ORDER NO. 64/2020-CUS (WZ)/ASRA/MUMBAI DATED 26.05.2020 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 Bhupat Kurji Tarapara

Respondent : Commissioner of Customs, Ahmedabad.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. AHD-CUSTOM-
000-APP-082-16-17 dated 27.01.2017 passed by the
Commissioner of Customs (Appeals), Ahmedabad.



ORDER

This revision application has been filed by Shri Bhupat Kurji Tarapara (herein after referred to as the Applicant) against the Order in appeal No. AHD-CUSTOM-000-APP-082-16-17 dated 27.01.2017 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. Briefly stated the facts of the case is that the applicant arrived at the SVPI Airport on 18.03.2014. Examination of his person resulted in the recovery of a gold kada, the gold kada was rhodium plated. Further personal search led to a metal object tied with a black thread around his neck. The Applicant stated that it was a "Tavij". The unwinding of the black thread led to the recovery of two gold bars. The officers thus recovered gold collectively weighing 349.570 grams, valued at Rs. 9,64,463/- (Rupees Nine Lacs Sixty four Thousand Four hundred and sixty three)

3. The Original Adjudicating Authority vide Order-In-Original No. 123/ADC-AK/SVPIA/O&A/2015 dated 14.10.2015 ordered absolute confiscation of the impugned gold under Section 111 (d) (l) and (m) of the Customs Act,1962 and imposed penalty of Rs. 2,00,000/- (Rupees Two Lacs) 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 No. AHD-CUSTOM-000-APP-082-16-17 dated 27.01.2017 rejected the appeal of the applicant.

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

5.1 The applicant wishes to submit that the impugned order is not at all legally sustainable,for the reasons stated below:

The Ld Commissioner (Appeals) has also failed to appreciate any of the submissions made by us in our replies to the show cause notices as well as in the grounds of appeal; that the entire allegations made against them is based on only assumptions presumptions of the officers of Customs; On frisking of the applicant physically during personal search one kada duly rhodium plated and one Tavij wrapped with black thread worn by him in his neck was found which was concealing two pure Gold Bar both marked with AL ETIHAD DUBAI UAE 10 TOLA 999.0.;The applicant submits that the said gold weighing 349.57 grams was purchased by him from Paras Jewellery LLC PO Box No. 252431 Dubai vide invoice

No. HO-460 dated 18.3.2014 and paid 56340 AED. The applicant submits that he had borrowed 56340 AED from one person named Mayurbhai Vyas residing at

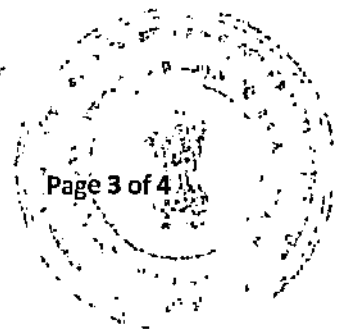


Dubai.; The applicant submits that he is a partner of a jewellery shop at Rajkot in the name of Shri Jewellers, and he had brought the said gold bars was for his personal use in his shop as he was manufacturer of jewellery; The applicant also wish to submit that as a matter of fact, he had immediately shown the proof of bonafide purchase from Dubai, to the customs officers, itself shows that the applicant was not clandestinely bringing in the said gold bars. However, the only mistake of the applicant was that he forgot to fill proper customs disembarkation declaration at the time of landing at Ahmedabad Airport; The applicant had shown his willingness to pay duty/fine/penalty in his replies to the SCN before the adjudicating authority also. But the same was denied by the adjudicating authority.; Since the applicant passenger was carrying the purchase receipt and it was in his possession on the date he landed and when gold bars were recovered, it cannot be said that the gold bars were of smuggled nature, when the applicant immediately showed the bonafide purchase invoice.;

5.2 The applicant further wish to submit that (i) Gold is notified under Section 123 and therefore, the notification no. 204-Cus dated 20-7-1984 as amended issued under Section 123 (2) would apply. In this notification, Gold bullion is not included. Therefore, the burden to prove the illegal importation is on the department. From the facts of the case, it is evident that the goods were seized by the Customs under the presumption that they were improperly imported goods and not possessing proper documents to show the bonafides, and as the gold bars were not declared in the customs disembarkation declaration. The applicant has already submitted the copies of the invoices from where they had purchased the same. Therefore, the burden to prove the gold in question is not smuggled is not required to be discharged by the applicant and it is for the department to establish that the goods are smuggled and this onus has not been discharged by the department.

5.3 The Applicant prayed for setting aside the impugned orders and prayed for release of the gold or pass any other order as deemed fit in the circumstances of the case and thus render justice.

6. A personal hearing in this case was scheduled in the case on 28.11.2019. Advocate for the Applicant Shri Rishikesh J. Mehra Advocate for the Applicant appeared for the hearing. He pleaded that some of the gold was worn, and the gold was not in commercial quantity and requested for a lenient view in the matter.



FINDINGS AND ORDER

7. The Government has gone through the facts of the case. The Applicant did not declare the gold as required under section 77 of the Customs Act, 1962 and therefore confiscation of the gold is justified. The impugned gold kada was coated with rhodium and the gold bars were worn around the neck as Tavij. The gold bars were tied with a black thread to appear as Tavij. The above concealment was elaborately planned to hoodwink the Customs Authorities and clearly establishes mensrea. The Applicant is not an eligible passenger to import gold. It is clear that the Applicant had no intention of declaring the gold if he was not intercepted by the Customs officers, the gold would have escaped payment of customs duty. The Government therefore is not inclined to accede to the Applicant's request for release of the gold on redemption fine and penalty. The impugned gold is liable for absolute confiscation and the revision application is liable to be dismissed.

8. In view of the above facts, the Government is of the opinion that the adjudicating and the Appellate authority has rightly upheld the absolute confiscation of the gold. Government therefore holds that there is no need for any interference. The Revision Application is dismissed.

9. So, ordered.

(SEEMA ARORA)

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

ORDER No. ⁶⁴/2020-CUS (WZ) /ASRA/MUMBAI DATED 26/05/2020.

To,

1. Shri Bhupat Kurji Tarapara. A-402, Arihant Apartment, Jivraj Park, Ambika Township, Nana Mama Road, Rajkot 360 005.

Copy to:

1. The Commissioner of Customs, SVPI Airport, Ahmedabad.
2. Shri Rishikesh J. Mehra, C/11, Rathi Apts., Opp Power House Colony, Dharamnagar, Sabarmati, Ahmedabad.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File. ,
5. Spare Copy.

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

