

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. 371/06/B/15-RA/
1449

Date of Issue 07/09/2018

ORDER NO. ⁶⁶²/2018-CUS (SZ)/ASRA/MUMBAI DATED 30.08.2018 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. Sunny Sanghvi

Respondent : Commissioner of Customs, Ahmedabad.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. AHD-CUSTM-000-APP-317-14-15 Dated 15.10.2014 passed by the Commissioner of Customs (Appeals), Ahmedabad.



ORDER

This revision application has been filed by Shri. Sunny Sanghvi (herein referred to as Applicant) against the order in appeal . AHD-CUSTOM-000-APP-317-14-15 Dated 15.10.2014 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. Briefly stated facts of the case are that the Officers of Customs intercepted the applicant, at the Chennai International Airport on 09.05.2014 and examination of his person resulted in recovery of a gold kada weighing 219 gms and valued at Rs. 5,62,364/- (Rupees Five lakhs Sixty two thousand Three hundred and Sixty four).

3. The Original Adjudicating Authority, vide order No. 21/JC/SVP/A/OSA/2014 dated 13.05.2014 confiscated the gold mentioned above under section 111 (l) & (m) of the Customs Act, 1962 , But allowed redemption of the gold on payment of a fine of Rs. 1,50,000/-. A Personal penalty of Rs. 1,25,000/- was imposed under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Ahmedabad, who vide his order No. AHD-CUSTOM-000-APP-317-14-15 Dated 15.10.2014 reduced the redemption fine to Rs. 1,00,000/- and also reduced the penalty to Rs. 75,000/- and partially modified the order in original.

5. The Revision Application has been filed interalia on the following grounds, requesting the following issues to be addressed that;

5.1 whether demand of custom duty on wearing apparels, which were taken back at the time of returning after journey was liable for customs duty or not.- The Applicant had come to India to attend to his fathers medical operation and was not in a normal sound mind and hence did not declare the gold. The applicant has taken back the gold to U.A.E. and hence the duty fine and penalty is required to be set aside. The non declaration of the gold does not amount to smuggling. The gold Kada was worn by the Applicant and therefore would not constitute as baggage. The Applicant was

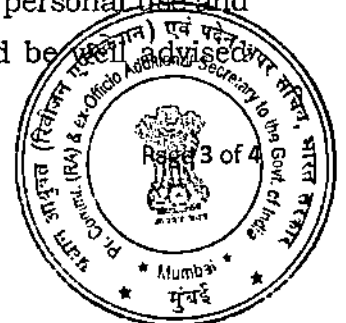


not liable for imposition of penalty under section 112 of the Customs Act, 1962.

5.2 The Revision Applicant cited various case laws in support of his case and pleaded for setting aside the order in Appeal and set aside redemption fine and personal penalty or any orders as deemed fit.

6. A personal hearing in the case was held on 09.08.2018, the Advocate for the respondent Shri B. Kumar attended the hearing. He re-iterated the submissions filed in Revision Application and submitted that the order in appeal be set aside and revision application be allowed. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. It is observed that the Applicant has submitted that he had come to attend the medical operation of his father and therefore was not in a proper frame of mind resulting in the lapse of not declaring the gold kada. A proper written declaration of gold was therefore not made by the Applicant as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the gold is justified. Once the goods are held liable for confiscation under section 111 *ibid*, penalty has to be imposed on the offender mandatorily. The Original adjudicating authority has rightly held the gold liable for confiscation and has used his discretion in allowing it to be redeemed on payment of Redemption fine and penalty under section 125 of the Customs Act, 1962. Further, the gold kada was weighing weighing 219 gms and valued at Rs. 5,62,364/- (Rupees Five lakhs Sixty two thousand Three hundred and Sixty four). The gold therefore clearly exceeded the quantity allowed to be carried under the baggage rules, thus justifying its liability for confiscation. It appears that the Applicant has taken back the gold kada on his return to U.A.E. and has pleaded for return of the redemption fine and penalty and customs duty paid by him to release of the impugned gold kada. It also appears that the Applicant is unaware of the rules governing re-export of gold and regarding export certificate issued as per Circular No. 02/2002-Cus-VI dated 08.01.2002. For issuance of the export certificate the passenger has to give a declaration that the articles under export are personal private property and are for personal use and not merchandise for sale. In this regard, the Applicant would be advised



not to resort to whimsical advice and take proper legal guidance when venturing into such issues/activities.

8. In view of the above facts the Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed penalty on the Applicant. The Government also holds that Commissioner (Appeals) taking a lenient view, has rightly reduced the redemption fine and penalty in the order of the original adjudicating authority. The Appellate order No. AHD-CUSTOM-000-APP-317-14-15 Dated 15.10.2014 passed by the Commissioner of Customs (Appeals), Ahmedabad, is therefore upheld as legal and proper.

9. Revision application is accordingly dismissed.

10. So, ordered.

(Signature)
20/8/14

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio

Additional Secretary to Government of India

ORDER No. 662/2018-CUS (SZ) /ASRA/MUMBAI

DATED 30.08.2018

To,

Shri. Sunny Sanghvi
c/o Shri Nimesh S. Mehta
Advocate
13, Shyama Bhuvan, Mathuradas Road,
Kandivali (West)
Mumbai - 400 067.

ATTESTED

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

Copy to:

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

