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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. 373/60/B/16-RA

Date of Issue 12.10.18

ORDER NO. 689/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 31.08.2018 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 Noufal Puthalat Manzil

Respondent : Commissioner of Customs, Calicut.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. CAL-EXCUS-000-APP-176 & 177-15-16-CUS dated 28.09.2015 passed by the Commissioner of Customs (Appeals-II), Cochin.



ORDER

This revision application has been filed by Shri Noufal Puthalat Manzil (herein referred to as Applicant) against the order no CAL-EXCUS-000-APP-176 & 177-15-16-CUS dated 28.09.2015 passed by the Commissioner of Customs (Appeals), Cochin.

2. Briefly stated the facts of the case are that the applicant, who arrived from Sharjah on 20.12.2011 was intercepted at the exit of the baggage hall. The Applicant disclosed that he had brought gold ornaments with him and showed a baggage receipt no. 3110 dated 20.12.2011 for an amount of Rs. 3,53,265/- being customs duty for 4.573 kgs of gold. On reasonable belief that the Applicant was carrying more high valued items, a detailed examination was carried out which resulted in a recovery of 5.350 kgs of gold kept in six packets totally valued at Rs. 1,18,54,000/- (Rupees One crore Eighteen lakhs Lakhs Fifty four thousand).

3. After due process of the law vide Order-In-Original No. 04/2012/ADC-CUS dated 28.09.2012 the Original Adjudicating Authority ordered absolute confiscation of the impugned goods under Section 111 (d), (j) (l), (m) and (o) of the Customs Act, 1962 and imposed penalty of Rs. 55,00,000/- under Section 112 (a) of the Customs Act, 1962. A penalty of Rs. 1,03,39,467/- was also imposed under Section 114AA of the Customs Act, 1962. The duty of Rs. 3,53,265/- was appropriated against the penalty paid under section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. CAL-EXCUS-000-APP-176 & 177-15-16-CUS dated 28.09.2015 upheld the absolute confiscation of the excess assorted gold with stones weighing 1756 grams and allowed redemption of the remaining gold weighing 3594 grams on payment of redemption fine of Rs. 16,00,000/- and reduced the penalty to Rs. 8,00,000/- under section 112 (a) and penalty under Section 114AA of the Customs Act, 1962 was also reduced to Rs. 16,00,000/-. The duty paid by the Applicant that was ordered to be appropriated against the penalty imposed was set aside.

5. The applicant has filed this Revision Application alongwith a condonation of delay Application pleading condonation of late filing of the Revision Application by 18 days and interalia on the following grounds that

5.1 The order of the respondent is against the law, weight of evidence, circumstances and probabilities of the case; A similar issue has been decided in 2012 (276) ELT 302 (Kar in Commissioner of Customs, Bangalore vs Powerica Ltd.

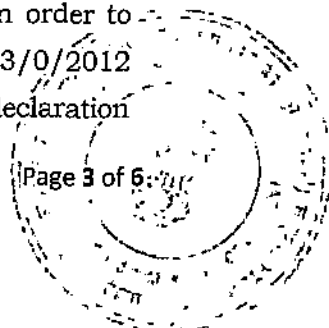


The Hon'ble High Court of Bangalore gave a finding that "Penalty imposition of duty and interest paid before the issue of Show cause notice and proper officers informed about it. In such a case initiation of proceedings for imposition of penalty are not maintainable under section 28(2B) of the Customs Act, 1962.; The Applicant submits that once duty is paid before issuance of Show Cause notice interest and penalty cannot be levied;

5.2 Further, The Applicant had stayed abroad for 10 years and had brought the gold from his savings, and voluntarily declared the gold to the Customs officers, who assessed the same and issued a baggage receipt by which duty was paid by the Applicant; The lower authority failed to appreciate that section 114AA has no application in the present case and therefore this penalty requires to be set aside; The Applicant cannot be held responsible for negligence and non-exercise of due diligence by the assessing Customs officers; The stones embedded gold are too obvious to have overlooked by the Customs officers and has betrayed the adjudicating authorities non-neutrality; The cross examination of the customs officers was denied by the adjudicating authorities;

5.3 The allegation of the attempt to clear the entire gold of 5.350 kgs of gold without payment of duty is legally untenable; The authorities should have seized and issued the Show cause notice only for the excess 777 grams of gold; The Applicant has not made any false declaration and has infact placed the entire gold before the Customs officers for weighment; The weighment was done by the officer twice and it was ascertained to be 4.573 kgs and a baggage prepared the baggage receipt and the baggage receipt prepared by the officer was countersigned by the superintendent; The Superintendent has deposed that he has not opened the packets; Ownership of the gold is not disputed and there is no ingenious concealment, and there was no intention to evade duty;

5.4 The averments concluding that there is preponderance of probability to conclude that the Applicant had withheld one packet from the Customs Authorities is not based on any evidence; The allegations made in the Show Cause notice are replete with inconsistencies; The Applicant is not a frequent flier or a smuggler; Even assuming without admitting that the Applicant had not declared the gold of 777grams he had attempted to evade only 36% of the duty leviable on this excess gold, but the penalty is more than the duty amount and is against the law; The Commissioner of Customs (Appeals) Chennai has passed an order to reexport the gold in Chnnayar Thirugnana Sampandamoorthy C4/173/0/2012 AIR-C.Cus No. 479 of 2012-AIR dated 18.06.2012 by the act of non-declaration



the Passenger has tried to evade customs duty of Rs. 61,000/-. Naturally this should be the primary point for deciding the quantum of penalty.

5.5 Under the circumstances the Applicant prays that the Revisionary Authority may be pleased to return the gold weighing 4.753 kgs and to permit re-export of 777 gms of gold and set aside the redemption fine of Rs. 16 lakhs and penalty of Rs. 8 lakhs and set aside the penalty imposed under Section 114AA of the Customs Act, 1962.

6. A personal hearing in the case was held on 19.04.2018, the Advocate for the respondent Shri Palanikumar attended the hearing he re-iterated the submissions filed in Revision Application and requested for examining the revision application on merits and allow re-export of the gold and reduction of redemption fine and penalty. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. In the interest of justice, delay of 18 days in filing this Revision application is condoned and revision application is decided on merits. The Applicant had brought a total 5.350 grams of the gold valued at Rs. 1,18,54,000/- as detailed below.

Sl. No	Description	Purity	Weight in grams
1	Assorted gold ornaments studded with stones	22 carat	548
2	Assorted gold ornaments studded with stones	18 carat	1208
3	Assorted gold ornaments without stones	22 carat	783
4	Assorted gold ornaments without stones	18 carat	2811
		TOTAL	5350

The case against the Applicant is that he did not declare the entire quantity of gold brought by him. There is no dispute regarding the eligibility of the Applicant for concessional rate of duty. However gold imported by a passenger as baggage is exempt from the requirement of import license only upto 5 kgs, such exemption is also not available to gold studded with stones.

8. Government observes that the applicant has declared the gold, which was not properly assessed. Out of 5.530 kgs brought by the applicant the gold weighing 4.573 kgs was assessed to duty and therefore the remaining gold weighing 777 grams escaped assessment. Government notes that the improper assessment in this case has been due to an error/negligence rather than an attempt to evade duty and the Applicant cannot be held responsible for the same. Mensrea could have been attributed in the case if the gold which escaped assessment was 4.573 kgs instead of 777 grams. The adjudicating

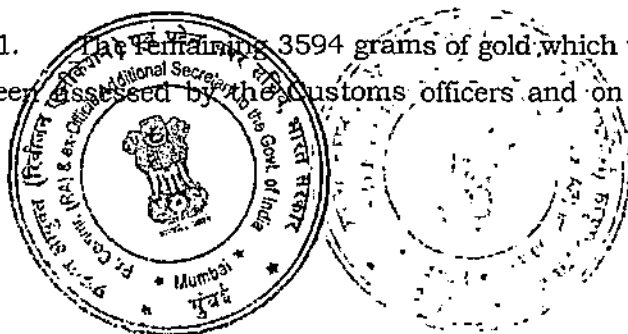


authority by entertaining the sleight of hand theory has entertained assumptions which goes into the realms of conjecture without evidence. Further, The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record an oral declaration on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant. Further, The Applicant has not attempted to cross the green channel. The gold is not in primary form. The ownership of the goods is not disputed. There is no allegation of indigenous concealment. Import of gold is restricted not prohibited. The Applicant is also eligible for concessional rate of duty on the gold without studded stones. The facts of the case do not reveal that there has been a deliberate attempt at concealing the gold in order to evade duty.

9. The Commissioner (Appeals) has held the 1756 grams of impugned gold, studded with stones liable for absolute confiscation, and has allowed redemption of 3594 grams of gold on payment of redemption fine and penalty. Absolute confiscation in such instances appears to be a harsh option, and unjustifiable. Further, gold which has been declared, assessed and on which duty has already been paid cannot be held liable for confiscation. The Government therefore holds that a lenient view can be taken in the matter. The gold without studded stones which was assessed to concessional rate of duty and on which duty was paid is liable to be released. The Applicant has pleaded for re-export on reduced redemption fine and personal penalty and the Government is inclined to accept the plea in respect of gold studded with stones. The absolute confiscation ordered on 1756 grams of the gold is therefore required to be set aside. The impugned order in Appeal is therefore required to be modified. Government also holds that no penalty is imposable under section 114AA of the Customs Act, 1962 as this provision is not attracted in baggage cases.

10. Taking into consideration the foregoing discussion, Government sets aside absolute confiscation of 1756 grams of the studded gold ornaments and allows its redemption for re-export in lieu of fine. The impugned studded gold ornaments is ordered to be redeemed on payment of redemption fine of Rs. 18,00,000/- (Rupees Eighteen Lakhs). A penalty of Rs. 4,50,000/- (Rupees Four Lakhs Fifty thousand) is imposed under section 112(a) of the Customs Act, 1962.

11. The remaining 3594 grams of gold which was declared by the Applicant and has been assessed by the Customs officers and on which concessional rate of duty has



2

already been paid by the Applicant is therefore not liable for confiscation. The gold is therefore ordered to be released to the Applicant.

12. The excess duty paid if any, is to be adjusted against the redemption fine imposed. The penalty of Rs. 16,00,000/- (Rupees Sixteen lakhs) under section 114AA has been incorrectly imposed, the penalty is therefore set aside. The impugned Order in Appeal stands modified to that extent. Revision application is partly allowed on above terms.

13. So, ordered.

(Signature)
21.8.18
(ASHOK KUMAR MEHTA)

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

ORDER No. 684/2018-CUS (SZ) /ASRA/ mumbai

DATED 31.08.2018

To,

Shri Noufal Puthalat Manzil
C/o Shri S. Palnikumar,
Advocate,
No. 10, Sukurama Street,
Second Floor,
Chennai -600 001.

Copy to:

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

ATTESTED

(Signature)
12/10/18

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

