

REGISTERED  
SPEED POST

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. 373/39/B/16-RA / 1224

Date of Issue 12.10.2018.

ORDER NO. 693/2018-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 Azmeer Khan Jain Yousuf

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus-I No. 729/2015 dated 30.11.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by Shri Azmeer Khan Jain Yousuf (herein after referred to as the Applicant) against the order in appeal No. 729/2015 dated 30.11.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

Briefly stated the facts of the case is that the applicant arrived at the Chennai International Airport on 11.09.2014. Examination of his baggage resulted in the recovery of nine gold bars and two cut gold pieces totally weighing 1000 gms valued at Rs. 27,69,000/- ( Rupees Twenty Seven Lakhs Sixty Nine thousand ). The gold bars were indigenously concealed in the CPU of a used computer carried by the Applicant as his checked in baggage.

3. The Original Adjudicating Authority vide Order-In-Original No. 257/26.08.2015 dated 28.08.2015 ordered absolute confiscation of the impugned gold under Section 111 (d), and (l) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, and imposed penalty of Rs. 2,75,000/- under Section 112 (a) of the Customs Act. The SONY TV was released on applicable duty.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 729/2015 dated 30.11.2015 rejected the appeal of the applicant.

5. The applicant has filed this Revision Application inter alia on the following grounds that;

5.1 The order of the appellate authority is unjust, unfair unreasonable biased and arbitrary and contrary to established legal principles; The Applicant has been duped into carrying the CPU as a donation for a poor needy child; The Applicant was not aware of the gold concealed in the CPU and innocently carried the CPU to Chennai, and has hence pleaded for leniency in the reducing the penalty; Both the authorities failed to see that the applicant was a victim of circumstances and was conned into carrying the CPU as a genuine item; Even otherwise even if the goods are liable to confiscation, it is not necessary to impose personal penalty



under the provisions of the Act; The fact that the Applicant had no knowledge in commission of the offence and it is a well established principle of law that the quantum of penalty has to be proportionate to the role played by the individual in commission of the offence.

5.2 The Applicant submitted case laws in favor of his case and prayed for taking this memorandum of Appeal on record and pass such order or orders as may be deemed fit in the case and render justice.

6. A personal hearing in the case was scheduled to be held on 09.08.2018, the Advocate for the respondent Shri B. Kumar attended the hearing, he reiterated the submissions filed in Revision Application and pleaded for setting aside the order in appeal and prayed for a lenient view in the matter.

7. The Government has gone through the case records it is observed that the gold bars were indigenously concealed in the in the CPU of a used computer carried by the Applicant as his checked in baggage. The concealment was planned so as to avoid detection and evade Customs duty and smuggle the gold into India. The Applicant has also disowned brought by him during the personal hearing and he has not made any claim for the gold, nor justified or defended its concealment. Under the circumstances the absolute confiscation of the gold is justified.

8. The facts of the case also reveal that the CPU was handed over to him by another person in Singapore to be carried to India. The Applicant was offered monetary benefits to carry the gold to India and he agreed to the transaction. He has accepted that he acted as a carrier for the gold has admitted the same in his statement recorded before the Customs officers. The fact that he was given a monetary consideration to carry the CPU reveals that he gave his consent to the proposal and it reveals mensrea The Government is not convinced that the Applicant was as innocent as made out to be in his revision application. This is not a simple case of mis-declaration. If the Applicant was not intercepted before the exit, he would have taken out the gold without payment of customs duty. Government therefore notes that the Applicant needs to be suitable penalized so as to dissuade the Applicant from such acts in future.



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. 2,75,000/-. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.

10. Revision Application is dismissed.

11. So ordered.

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

ORDER No. 692/2018-CUS (SZ) /ASRA/mumbai

DATED 31.08.2018

To,

Shri Azmeer Khan Jain Yousuf  
c/o M/s B. K. Associates  
"Time Tower", Room No. 5, II Floor,  
169/84, Gengu Reddy Road,  
Egmore, Chennai- 600 008.

Copy to:

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

**ATTESTED**

3/2/18/11/11  
**S.R. HIRULKAR**  
Assistant Commissioner (R.A.)

