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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. 373/161/B/15-RA/27

Date of Issue 12.10.2018.

ORDER NO. 616/2018-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 Abdul Lateef K.M.

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus-I No. 198/2015 dated 24.04.2015 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Abdul Lateef K. M. (herein referred to as Applicant) against the Order in Appeal C. Cus No. 198/2015 dated 24.04.2015 passed by the Commissioner of Customs (Appeals), Chennai.

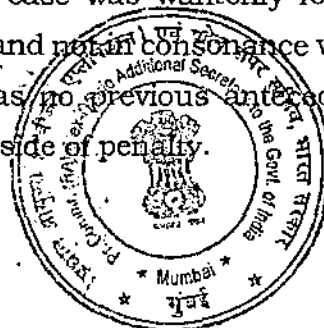
2. Briefly stated the facts of the case is that the applicant arrived at the Chennai International Airport on 25.10.2013. Examination of his person and baggage resulted in the recovery of 1.935 kgms of gold valued at Rs. 56,44,395/- (Rupees Fifty six lakhs Forty four thousand Three hundred and Ninety Five) The gold was indigenously disguised as barbeque skewers and rods of 2m and 1.75m strapped to the metal plate of the bag.

3. The Original Adjudicating Authority vide Order-In-Original No. 143/06.03.2015 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. 6,00,000/- under Section 112 (a) of the Customs Act. A penalty of Rs. 1,00,000/- was also imposed under section 114AA 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. 198/2015 dated 24.04.2015 rejected the appeal of the applicant.

5. The applicant has filed this Revision Application interalia on the following grounds that

5.1 The impugned order passed by the Commissioner (Appeals) is against the law, weight of evidence and probabilities of the case; Importation of gold is not prohibited and therefore the authority should have extended the benefit of redemption of the goods under section 125 of the Customs Act, 1962, no such exercise has been undertaken and therefore the order stands vitiated; He is working in Dubai since 2006 and is an eligible passenger; the statement recorded from him is involuntary; and the case was wantonly foisted on him; The penalty imposed is too harsh and not in consonance with the alleged offence; The Revision Applicant has no previous antecedents and therefore pleads leniency and setting aside of penalty.



5.2 The Revision Applicant cited various cases in support of his case prayed that the Hon'ble Revision Authority may please set aside the orders of the lower authorities and permit re-export of the gold in the interest of justice.

5. A personal hearing in the case was scheduled to be held on 27.08.2018, the Advocate for the respondent Shri N. Balaji attended the hearing, he reiterated the submissions filed in Revision Application and pleaded for setting aside the order in appeal and allow the revision application.

6. The Government has gone through the case records it is observed that the gold was indigenously concealed and disguised as barbeque skewers and also as rods and carried by him as baggage. The concealment was planned so as to avoid detection and evade Customs duty and smuggle the gold into India. The aspect of allowing the gold for re-export can be considered when imports have been made in a legal manner. This is not a simple case of mis-declaration. In this case the Applicant has blatantly tried to smuggle the gold into India in contravention of the provisions of the Customs, 1962. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and that the Applicant had no intention of declaring the gold to the authorities and if he was not intercepted before the exit, the Applicant would have taken out the gold without payment of customs duty.

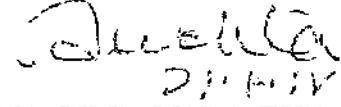
7. The above acts have therefore rendered the Applicant liable for penal ~~action~~ under section 112 (a) of the Customs Act, 1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed a penalty. The Government also holds that ~~Commissioner (Appeals)~~ (A) Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority. Government however observes that no penalty is imposable under section 114AA of the Customs Act, 1962 as this provision is not attracted in baggage cases and needs to be set aside.

8. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order 198/2015 dated 24.04.2015 passed by the Commissioner of Customs (Appeals), Chennai is upheld as legal and proper. The penalty of Rs. 1,00,000/- (Rupees One Lakh) imposed under section 114AA of the Customs Act, 1962, has been ~~imposed~~ incorrectly imposed, the same is therefore set aside.



9. Revision Application is partly allowed to the extent of setting aside the penalty imposed under section 114AA of the Customs Act, 1962.

10. So, ordered.



(ASHOK KUMAR MEHTA)

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

ORDER No. 696/2018-CUS (SZ) /ASRA/MUMBAI

DATED 31.08.2018

To,

Shri Abdul Lateef K. M.
s/o Shri Mohammed Kallarakal,
Kallarakal House, HMT Colony,
P.O. Pallilankara Kalamassery,
Ernakulam
Kerala 683503.

Copy to:

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

ATTESTED


12/11/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

