

REGISTERED

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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. 380/175/B/16-RA

2014

Date of Issue 27.11.2014

ORDER NO. <sup>127</sup> /2018-CUS (SZ) / ASRA / MUMBAI/ DATED 21.09.2018 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 : Commissioner of Customs (Airport), Cochin

Respondent : Shri Palliparambil Kunjumohamed Anwar

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 141/2016 Dated 18.10.2016 passed by the Commissioner of Customs (Appeals), Cochin.



ORDER

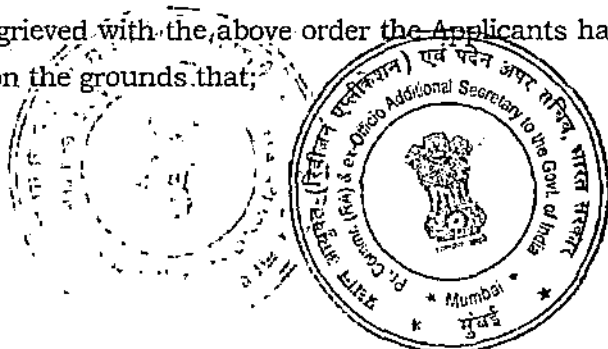
This revision application has been filed by Commissioner of Customs, Cochin, (herein referred to as Applicant) against the Order in Appeal No. 141/2016 Dated 18.10.2016 passed by the Commissioner of C. Ex. & Customs (Appeals), Cochin.

2. Briefly stated the facts of the case is that the Respondent, arrived at the Cochin International Airport on 11.02.2015. Examination of the baggage and person of the respondent resulted in the recovery of six gold bars totally weighing 1950 grams valued at Rs. 50,17,233/- ( Rupees Fifty lakhs Seventeen thousand Two hundred and Thirty three). The gold bars were recovered from a 1.5 meter white cloth tied around his waist beneath his pants. During his interrogation the Respondent revealed that he had earlier smuggled gold bars weighing 699.600 grams valued at Rs. 17,39,753/- on 31.10.2014 and 699.600 grams valued at Rs. 16,95,560/- on 10.12.2014. The respondent also informed that he had taken 2,90,000/- Saudi Riyals to Jeddah on 04.02.2015 to purchase the gold.

3. After due process of the law vide Order-In-Original No. 114/2016 dated 06.05.2016 the Original Adjudicating Authority ordered absolute confiscation of the goods under Section 111 (d) (l) and (m) of the Customs Act, 1962, and imposed penalty of Rs. 2,00,000/- under Section 112 (a) of the Customs Act,1962. A penalty of Rs. 1,00,000/- under Section 114AA was also imposed on the respondent. The Original Adjudicating Authority also held the 699.600 grams valued at 17,39,753/- said to have been smuggled on 31.10.2014, liable for confiscation and ordered payment of duty of Rs. 17,91,946/- alongwith interest. The 699.600 grams valued at Rs. 16,95,560/- said to have been smuggled on 10.12.2014, were also held liable for confiscation and ordered payment of duty of Rs. 17,46,427/- alongwith interest. A penalty of Rs. 1,00,000/- under Section 114AA was also imposed on the respondent. The 2,90,000/- Saudi Riyals were also held liable for confiscation.

4. Aggrieved by the said order, the respondent filed an appeal before the Commissioner (Appeals) who vide Order-In-Appeal no. 141/2016 Dated 18.10.2016 upheld the absolute confiscation of the gold and the penalty of Rs. 2,00,000/- under Section 112 (a) of the Customs Act,1962. The order however set aside the confiscation of the 699.600 grams of gold smuggled on 31.10.2014 and 10.12.2014. The order in Appeal also set aside the confiscation of 2,90,000/- Saudi Riyals and the consequent penalty under section 114AA of the Customs Act,1962 and modified the Order in original.

5. Aggrieved with the above order the Applicants have filed this revision application interalia on the grounds that;

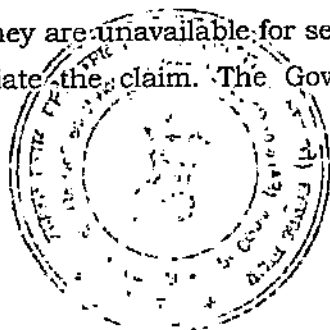


5.1 The entire case has been built on the statement of the passenger under section 108 of the Customs Act, 1962. The Honble Supreme Court in the case of Naresh J. Sukhawani vs UOI 1996(83) ELT 258 (SC) has held that the " statement made before the Customs Officials is not a statement recorded under sec 161 of the criminal procedure code, 1973" It is a material piece of evidence collected under section 108 of the Customs Act, 1962. The passenger has retracted the statement including the act he committed on the day he arrived with six bars of gold on 11.02.2015 only after a lapse of eight months; Commissioner (Appeals ) appears to have accepted the plea of the passenger who has denied his involvement in the whole case, but has however has confirmed the confiscation of the gold bars seized on the day he has arrived; The travel dates on which the Respondent had brought the gold earlier was confirmed from the entries made in the passport and both the earlier trips were short visits; These vital evidence has not been considered by the Appellate authority.

5.2 The Revision Applicant therefore prayed that under the facts and circumstances the order in Appeal be set aside, Order of the original authority be restored and prayed for an appropriate order as deemed fit.

6. In view of the above, the Respondent and his Advocate was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit, and accordingly a personal hearing in the case were scheduled on 28.08.2018. However, the Revision Applicants have requested for exemption from personal appearance and the Respondent nor his advocate replied to the Show Cause Notice or attended the said hearing. The case is therefore being decided ex parte on merits

7. The Government has gone through the case records it is observed that the gold brought in by the Respondent has been confiscated absolutely in the Order in original and the same has been upheld by the Appellate order. The Applicants only prayer is that the earlier gold imported by the Respondent in his statements before the Customs officers which was held liable to confiscation by the Original Adjudication Authority has been set aside in the Appellate order. It is observed that the entire case of the Applicants is based on the statement of the respondent. The Appellate order is right in holding that the Applicants have not brought out any independent evidence corroborating the charges regarding the past transgressions, Further, the statements have been retracted by the respondent. The Commissioner (Appeals) has therefore held that the confiscation of the gold and foreign currency handing unsustainable under law, when they are unavailable for seizure and when there is no supporting evidence to substantiate the claim. The Government agrees with the contention and the



reasoning of the Commissioner(Appeals). The impugned Order in Appeal therefore needs to be upheld and the Revision Application is liable to be dismissed.

8. In conclusion, the Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order 141/2016 Dated 18.10.2016 passed by the Commissioner of Customs (Appeals),Cochin. is upheld as legal and proper.

9. Revision application is accordingly dismissed.

10. So, ordered.

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

ORDER No. 127/2018-CUS (SZ) /ASRA/ MUMBAI

DATED 21-09-2018

To,

1. The Commissioner of Customs (Airport),  
Dabolim International Airport,  
Goa
2. Shri Palliparambil Kunjumohamed Anwar  
Palliparambil House,  
Panambikkunnu,  
Kaipamangalam P.O.,  
Trichur Dist., 680 681.

Copy to:

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

