



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
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Mumbai-400 005

F.No. 373/22/B/17-RA

306<sup>o</sup>

Date of Issue 28.11.2018

ORDER NO. 747/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 27.09.2018 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 : Shri Gopaldas Namomal

Respondent : Commissioner of Customs (Airport), Bangalore.

Subject :Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 224/2017 dated 07.08.2017 passed by the Commissioner of Customs (Appeals) Bangalore.

ORDER

This revision application has been filed by Shri Gopaldas Namomal (herein after referred to as the "Applicant") against the order in Appeal No. No.224/2017 dated 07.08.2017 passed by the Commissioner of Customs (Appeals) Bangalore.

2. Briefly stated facts of the case are that the applicant, an Indian National had arrived at the Chennai Airport on 19.01.2016. Examination of his baggage resulted in recovery of one cut gold piece weighing 544.470 grams valued at Rs. 14,37,400/- (Rupees Fourteen Lakhs Thirty seven thousand four hundred). The gold was recovered from an Xbox 360 4GB video game ingeniously concealed by the applicant.

3. The Original Adjudicating Authority, vide its Order in Original No. 85/2016-17 dated 16.02.2017 confiscated the impugned gold referred above and a penalty of Rs. 4,50,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant. A penalty of Rs. 3,00,000/- under Section 114AA of the Customs Act, 1962 was also imposed on the Applicant.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner (Appeals). Commissioner of Central Excise (Appeals) Chennai, vide his Order-in-Appeal No No.224/2017 dated 07.08.2017 passed by the Commissioner of Customs (Appeals) Bangalore rejected the Appeal of the Applicant.

5. Aggrieved with the above order the Applicant has filed this revision application inter alia on the grounds that.

5.1 The order of the appellate authority is not in conformity with the Baggage rules 1998, hence the same needs to be set aside in the interest of justice; The order of absolute confiscation was not at all justified; He had not contravened the provisions of Customs Act, 1962 and had no malafied intention to avoid payment of duty; The applicant was not a carrier but the actual owner of the gold; When the Applicant has been already charged under section 112 penalty under section would not be judiciously correct;

5.3 The Revision Applicant cited judgments in support of his case and prayed for release of the gold under section 125 of the Customs Act, 1962 and reduce the personal penalty and thus render justice.

6. A personal hearing in the case was held on 19.09.2018, the Advocate for the respondent Shri O. M. Rohira attended the hearing he re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of the goods was allowed. Nobody from the department attended the personal hearing.

7. The Government has gone through the case records it is observed that the gold bars were indigenously concealed in the X-box 360 4GB video game brought by the Applicant. The concealment was planned so as to avoid detection and evade Customs duty and smuggle the gold into India. 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 release on concessional rate of duty also cannot be entertained as the Applicant has not declared the gold as required under Section 77 of the Customs Act, 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.

8. 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 under section 112(a) of the Customs Act, 1962. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority. Government however also holds that no penalty is imposable under section 114AA of the Customs Act, 1962 as this provision is not attracted in baggage cases. The penalty imposed under section 114AA of the Customs Act, 1962 therefore is required to be set aside.



9. In conclusion, the Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order 224/2017 dated 07.08.2017 passed by the Commissioner of Customs (Appeals) Bangalore is upheld as legal and proper, except setting aside the penalty of Rs.3,00,000/- ( Rupees Three lakhs) imposed under section 114AA of the Customs Act,1962.

10. Revision application is accordingly modified to that extent.

11. So, ordered.

*21/9/18*

(ASHOK KUMAR MEHTA)

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

ORDER No. <sup>747</sup>/2018-CUS (SZ) /ASRA/MUMBAI

DATED 27-09.2018

To,

Shri Gopaldas Namomal  
C/o Shri M. G. Rohira, Advocate,  
148/5, Uphaar, 10<sup>th</sup> Road,  
Khar (W),  
Mumbai -52.

Copy to:

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