

ORDER

This revision application has been filed by Shri Mayur K. Kuchhadiya (herein after referred to as the "Applicant") against the order in Appeal No. AHD-CUSTOM-000-APP-349-15-16 dated 05.02.2016 passed by the Commissioner of Customs (Appeals) Ahmedabad.

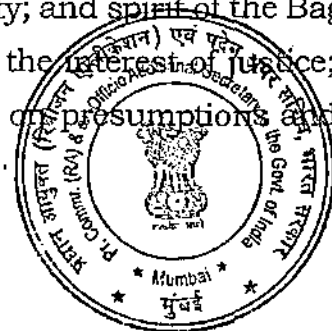
2. Briefly stated facts of the case are that the applicant, on prior information was intercepted on arrival at the Ahmedabad Airport on 24.07.2013. Interrogation revealed that he had three packets with him from Sharjah which he handed over to two airline staff. Followup action resulted in the recovery of 3073.43 grams of gold totally valued at Rs. 86,04,987/- (Rupees Eighty Six Lakhs Four thousand Nine hundred and Eighty seven) and US\$ 10,000/-. Investigations revealed that the gold recovered, was part of an ingenious conspiracy wherein gold would be smuggled from Sharjah, and removed from the Airport with the help of Airline staff by evading customs duty.

3. The Original Adjudicating Authority, vide its Order in Original No. 88/ADC-MRM/SVPIA/O&A/2015 dated 20.05.2015 interalia absolutely confiscated the impugned gold and the US\$ 10,000/- referred above and imposed a penalty of Rs. 10,00,000/- under Section 112 (a) 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) Ahmedabad, vide his Order-in-Appeal No AHD-CUSTOM-000-APP-349-15-16 dated 05.02.2016 passed by the (rejected the Appeal of the Applicant.

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

5.1 The order of the appellate authority is not in conformity with principles of natural justice and equity; and spirit of the Baggage rules 1998, hence the same needs to be set aside in the interest of justice; All the allegations made against the Applicant are based on presumptions and surmises which however strong



cannot take the place of proof; The Applicant is the real owner of the gold and has claimed so; He has not contravened any provisions of the Customs Act, 1962 and hence the gold be released on payment of duty; The Applicant had brought the gold from his own earnings and the statements were recorded forcibly and should not be admissible in law; If he had any malafide intention he would not have brought any foreign currency, which was brought to pay duty on the gold; Absolute confiscation is very severe nowadays due to liberalization; The goods are liable to be released as per of gold ; section 125 of the Customs Act,1962

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 pleaded for release of the gold and currency as per section 125 of the Customs Act,1962. Nobody from the department attended the personal hearing.

7. The Government has gone through the case records it is observed that the gold recovered from the Applicant was part of an ingenious conspiracy wherein gold would be smuggled from Sharjah and was removed from the Airport with the help of Airline staff. The entire conspiracy 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 willingly taken part in the conspiracy by bringing the gold and handing it to the airline staff so as 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 proper investigations were not carried out and the applicant 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. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority. The revision application therefore merits dismissal.

9. Revision application is dismissed.

11. So, ordered.

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

ORDER No. 151/2018-CUS (WZ) /ASRA/MUMBAI

DATED 28.09.2018

To,

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C/o Shri M. G. Rohira, Advocate,
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Copy to:

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

