



सत्यमेव जयते

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 371/20/B/15-RA

2030

Date of Issue 27.11.2018

ORDER NO. 752/2018-CUS (WZ) / ASRA / MUMBAI/ DATED 28.09.2018 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 Prafulchandra Gordhandas Rajpara

Respondent : Commissioner of Customs (Airport), Ahmedabad

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. AHD-CUSTOM-000-APP-404-14-15 dated 30.01.2015 passed by the Commissioner of Customs (Appeals) Ahmedabad.



ORDER

This revision application has been filed by Shri Prafulchandra Gordhandas Rajpara (herein after referred to as the "Applicant") against the order in Appeal No. No. AHD-CUSTOM-000-APP-404-14-15 dated 30.01.2015 passed by the Commissioner of Customs (Appeals) Ahmedabad.

2. Briefly stated facts of the case are that the applicant, an Indian National had arrived at the Ahmedabad Airport on 14.05.2013. Examination of his person resulted in recovery of 165 gold chains 41 rings made of gold/platinum with stones and one gold pendant totally weighing 1028.49 grams valued at Rs. 78,27,331/- (Rupees Seventy Eight Lakhs Twenty Seven thousand Three hundred and thirty one). The gold was ingeniously concealed and tied around his legs beneath the socks worn by the applicant.

3. The Original Adjudicating Authority, vide its Order in Original No.47/JC/SVP/IA/O&A/2014 dated 29.09.2014 absolutely confiscated the impugned gold referred above and a penalty of Rs. 5,00,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant. A penalty of Rs. 5,00,000/- 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) Ahmedabad, vide his Order-in-Appeal No AHD-CUSTOM-000-APP-404-14-15 dated 30.01.2015 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 Natural justice and equity; and spirit of 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. The gold was in reasonable quantity,



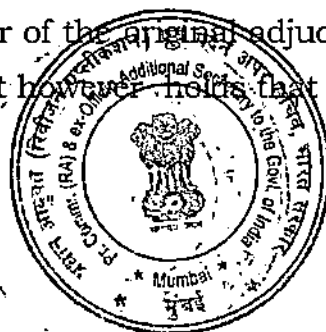
assorted nature and were in small values; All the gold jewelry was bonafide items of baggage and not brought for sale or trade purpose; He was intercepted by the Customs Officers even before given his declaration and wrongful confessions were taken inspite of clear denial.

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 was ingeniously concealed and tied around his legs beneath the socks worn 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. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority. Government however holds that Government however holds that when penalty is imposed under section



112 no penalty is required to be imposed under section 114AA of the Customs Act,1962 for the same offence. The penalty imposed under section 114AA of the Customs Act,1962 therefore is required to be set aside and the order of the Commissioner (Appeals) is required to be modified.

9. The Government therefore modifies the Appellate order AHD-CUSTM-000-APP-404-14-15 dated 30.01.2015 passed by the Commissioner of Customs (Appeals) Ahmedabad. The penalty of Rs. 5,00,000/- (Rupees Five lakh) imposed under section 114AA of the Customs Act,1962 is set aside, the rest of the order is upheld as legal and proper.

10. The impugned order stands modified to that extent. Revision application is partly allowed on above terms.

11. So, ordered.

Ashok Kumar Mehta
28/9/18

(ASHOK KUMAR MEHTA)

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

ORDER No. 752/2018-CUS (WZ) /ASRA/Mumbai

DATED 28.09.2018

To,

Shri Prafulchandra Gordhandas Rajpara
C/o Shri M. G. Rohira, Advocate,
148/5, Uphaar, 10th Road,
Khar (W),
Mumbai -52.

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.

