

371/33/B/15-RA  
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सत्यमेव जयते

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

F.No. 371/33/B/15-RA

2034

Date of Issue

27.11.2018

ORDER NO. 756/2018-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 Abdul Gani Abdul Sattar

Respondent : Commissioner of Customs (Airport), Mangalore

Subject :Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 223/2015 dated 25.02.2016 passed by the Commissioner of Customs (Appeals) Bengaluru.



ORDER

This revision application has been filed by Shri Abdul Gani Abdul Sattar ( herein after referred to as the "Applicant") against the order in Appeal No. 223/2015 dated 25.02.2016 passed by the Commissioner of Customs (Appeals) Bengaluru.

2. Briefly stated facts of the case are that the applicant, on prior information was intercepted on arrival at the Mangalore Airport on 22.02.2013. Examination of his baggage resulted in the recovery of 299 grams of gold jewelry totally valued at Rs. 6,49,000/- ( Rupees Six Lakhs Forty Nine thousand ). The gold was indigenously concealed in two packets and recovered from a tin box of Quaker oats kept in his baggage.

3. The Original Adjudicating Authority, vide its Order in Original No. 07/2013 ADC dated 31.10.2013 absolutely confiscated the impugned gold and imposed a penalty of Rs. 1,50,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant. A penalty of Rs. 1,00,000/- 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 223/2015 dated 25.02.2016 passed by the 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 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; The order of absolute confiscation was not at all justified; He had no malafide intention of evading the customs duty as wrongly alleged; The Applicant had brought the gold from his own earnings and the statements were recorded forcibly and has retracted the should not be admissible in law; There are a number of cases wherein absolute confiscation of



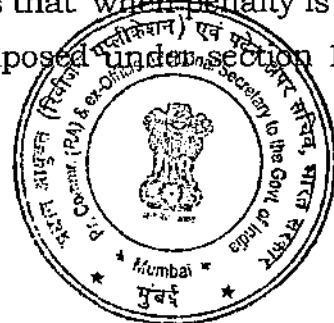
the gold has been set aside and gold has been released on redemption fine and penalty; The Applicant had brought the gold from his own earnings and it was brought for his family and not for commercial reasons; The quantity of the impugned gold is also reasonable and not in trade quantity;

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 under 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 indigenously concealed in two packets and recovered from a tin box of Quaker oats kept in his baggage. 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. The revision application therefore merits dismissal. Government however holds that when penalty is imposed under section 112 (a), 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.

9. The Government therefore modifies the Appellate order . 223/2015 dated 25.02.2016 passed by the Commissioner of Customs (Appeals) Bengaluru. The penalty of Rs. 1,00,000/- ( Rupees One 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. 756/2018-CUS (WZ) /ASRA/MUMBAI

DATED 28-09-2018

To,

Shri Abdul Gani Abdul Sattar  
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, Mangalore.
2. The Commissioner of Customs (Appeals) Bengaluru.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard File.
5. Spare Copy.

