



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

F.No. 373/105/B/2018-RA

Date of Issue

13.11.2018

ORDER NO. 834/2018-CUS (WZ) / ASRA / MUMBAI/ DATED 23.09.2018 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 Ravindran Veerappapiillai

Respondent : Commissioner of Customs (Airport), Bengaluru

Subject :Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 927-928/2017 dated 23.10.2017 passed by the Commissioner of Customs (Appeals) Bengaluru.



ORDER

This revision application has been filed by Shri Ravindran Veerappapiillai (herein after referred to as the "Applicant") against the order in Appeal No. 927-928/2017 dated 23.10.2017 passed by the Commissioner of Customs (Appeals) Bengaluru.

2. Briefly stated facts of the case are that the Applicant was intercepted at the Bengaluru International Airport and a complete body search was conducted which resulted in recovery of two gold bars totally weighing 200 grams valued at Rs. 5,51,000/- (Rupees Five Lakhs Fifty one thousand). The gold was recovered from his rectum.

3. The Original Adjudicating Authority, vide its Order in Original No. 678/2017 dated 30.03.2017 absolutely confiscated the impugned gold bars, and imposed a penalty of Rs. 2,25,000/- under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by this order the Applicant as well as the department filed an appeal with the Commissioner (Appeals). Commissioner of Customs (Appeals) Bengaluru, vide his Order-in-Appeal No 927-928/2017 dated 07.08.2017 the rejected the Appeal of the Applicant and imposed the penalty of 10% of the value of the gold under section 114AA of the Customs Act, 1962.

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 against law, weight of evidence and circumstances and probabilities of the case; the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; Gold is a restricted item and not prohibited goods; The Appellate authority has simply glossed over the judgements and the points raised in the appeal grounds and reason has been given to reject the Appeal; Gold is a restricted item and not prohibited goods; The adjudication authority has not exercised the option of section 125 77of the Customs Act, 1962; The Applicant further pleaded that as per the judgement by CEGAT South Zonal Bench , Chennai in the case of Shaikh Shahabuddin vs Commissioner of Customs Chennai has held that absolute confiscation without giving the option of redemption for gold concealed in shaving cream tubes is not proper, and the case was remanded for denovo adjudication; The Hon'ble High Court of Andhra Pradesh in the case of Sheikh Jamal Basha vs GOI 1997 (91) ELT 277 (AP) has stated held that under section 125 of the Act is Mandatory duty to give option to the person found guilty to



pay fine in lieu of confiscation; When penalty has already been imposed under section 112 it was not judiciously correct to imposed penalty under section 114AA.

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 25.09.2018, the Advocate for the respondent Shri S. Palanikumar attended the hearing he re-iterated the submissions filed in Revision Application and pleaded for reduction of the redemption fine and penalty. 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 his rectum and was recovered when detected at the metal detector. 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 the original adjudicating Authority has erred in imposing penalty under section 111 (d) (i) (l) and (m) of the Customs Act, 1962 and the Commissioner (Appeals) has upheld the order in original and imposed penalty under section 114AA of the Customs Act,1962. The penalty imposed under section 114AA of the Customs Act,1962 therefore, is required to be set aside. The order of the Commissioner (Appeals) also needs to be modified accordingly.



9. The Government therefore sets aside the Appellate order 927-928/2017 dated 23.10.2017 passed by the Commissioner of Customs (Appeals) Bengaluru. Government upholds the absolute confiscation of the gold. The penalty of Rs. 2,25,000/- (Two Lakhs Twenty Five thousand imposed under section 111 (d), (i), (l) and (m) of the Customs Act,1962 is set aside. Government imposes penalty of Rs. 2,25,000/- (Two Lakhs Twenty Five thousand) under section 112(a) of the Customs Act, 1962. 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 is therefore set aside.

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

11. So, ordered.

(Handwritten Signature)
22X/V

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

ORDER No.834/2018-CUS (WZ) /ASRA/

DATED 23.09.2018

To,

Shri Ravindran Veerappapiillai
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai - 600 001.

Copy to:

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

ATTESTED

(Handwritten Signature)
3
S.R. HIRULKAR 19/11/18
Assistant Commissioner (R.A.)

