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GOVERNMENT OF INDIA
MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

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F.No. 373/150/B/16-RA
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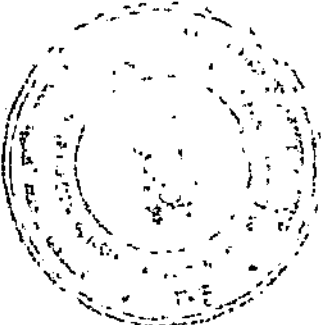
Date of Issue 28.11.2010

ORDER NO. ⁸⁶³⁻⁸⁶⁴ /2018-CUS (SZ) / ASRA / MUMBAI/ DATED 29.10.2018
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.

Applicants : 1. Shri Sasikumar Karuvanthur Achuthan
2. Shri Murukesh Karuvanthur Achuthan

Respondent: 1 & 2 . Additional Commissioner of Customs , Cochin

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
COC-CUSTOM-000-APP-08/2016-17 dated 15.04.2016
passed by the Commissioner of Customs (Appeals),
Cochin



ORDER

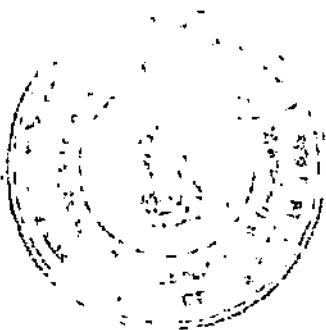
This Revision Applications have been filed by Shri Sasikumar Karuvanthur Achuthan (herein referred to as Applicant No. 1) and Shri Murukesh Karuvanthur Achuthan (herein referred to as Applicant No. 2) against the Order-in-Appeal No. COC-CUSTOM-000-APP-08/2016-17 dated 15.04.2016 passed by the Commissioner of Customs (Appeals), Cochin.

2. The brief issue of the cases are as given below:

2.1 The appellants arrived at Cochin International Airport, Nedumbassen on 29.11.2014 from Dubai by Indigo Airlines flight No. 6E 68. They opted for green channel and walked through.

2.2 The Customs Officers intercepted the Appellant No. 2 at the exit gate of the airport and on personal search recovered one cut piece of yellow coloured bar and seven small cut pieces of yellow colour bar totally weighing 387.08 gms concealed in the inner pocket of the pant worn by him. He revealed that the gold was given to him by his brother i.e. Applicant No. 1 also a co-passenger in the same flight and his brother had already proceeded out through green channel/exit and was waiting outside of the Airport. Hence the Applicant No. 1 who was waiting outside of Airport was intercepted by the Air Intelligence Customs Officers.

2.3 On person search of the Applicant No. 1, a bill showing Sl. No. 23903 dated 27.11.2014 for purchase of 1062.64 gms of gold was recovered from the pocket of trouser worn by him and admitted that he had brought two cut pieces of gold bar weighing 674.59 gms concealing in his inner pocket of the trouser worn by him and after customs clearance had kept it in a black canvas shoulder bag in the Room No. 208 of Lotus 8 Airport Hotel, opposite side of the Cochin Airport where he was staying. Further, he also admitted that he had



(Signature)



handed over one piece of gold bar and seven cut pieces of gold weighing 387.08 gms to this brother i.e. Applicant No. 2.

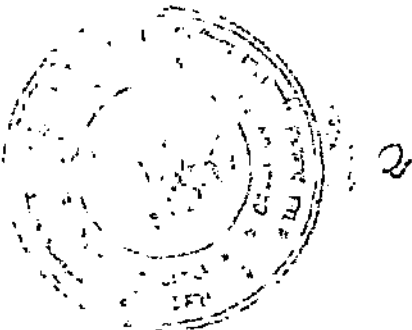
2.4 Thereafter, the officers ascertained the value of the three gold bars and seven cut pieces of gold and a gold Assayer Shri Antu Jose of M/s Jos Jewellery, Angamaly certified the gold was crude gold bars totally weighing 1061.67 gms with purity of 24 carat (999.0) totally value at Rs. 25,12,209/- (Rupees Twenty Five Lakhs Twelve Thousand Two Hundred and Nine Only) (Assessable Value) and Rs. 28,10,241 (Rupees Twenty Eighty Lakhs Ten Thousand Two Hundred and Forty One Only) (market value).

2.5 After due process of the law, the Additional Commissioner of Customs, Cochin International Airport, Nedumbassary vide Order-in-Original No. 41/2-15 dated 15.09.2015 ordered for absolute confiscation of the crude gold bar weighing 1061.670 gms and valued at Rs. 25,12,209/- (Rupees Twenty Five Lakhs Twelve Thousand Two Hundred and Nine Only)(Assessable Value) and Rs. 28,10,241 (Rupees Twenty Eighty Lakhs Ten Thousand Two Hundred and Forty One Only) (market value) under Section 111(d)(j)(l) and (m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 and imposed Personal Penalty of Rs. 2,00,000/- each of the applicant under Section 112 (a) & (b) of the Customs Act, 1962.

2.3 Aggrieved by the Order-in-Original dated 15.09.2015, the Applicants had filed appeal with the Commissioner of Customs(Appeals), who rejected the Appeal as it was devoid of merit.

3. Aggrieved by the Order-in-Appeal dated 15.4.2016, the Applicants has filed the Revision Applications on the ground that:

3.1 They are entitled to bring gold on payment of Customs duty and was intercepted by the Customs Officer before making any declaration regarding the gold which was in their possession. Hence are liable for confiscation.



- 3.2 They had not concealed any dutiable or prohibited items which attract the provisions of Section 111(i) of Customs Act.
- 3.3 When the applicants expressed their intention to pay the custom duty as applicable it was the responsibility of the Respondent to extend an option for paying custom duty or allowed re-export of the same without fine and penalty.
- 3.4 this is not a case calling for confiscation and penalty in as much as the goods were not concealed nor mis-declared and the goods are for the bonafide use of theirs.
- 3.5 In the matter of Mohd. Zia Ul Haque Vs Govt. of India [2014 (314) ELT 849 (GOI)], the Revision Authority categorically held that when the goods are not prohibited, the adjudicating officer shall give option to pay redemption fine in lieu of confiscation, as the officer think fit, which discretion has to be exercised judiciously. Thus even if it is assumed that the gold imported by the them are liable for confiscation, it is not a prohibited goods to order of absolute confiscation,
- 3.6 They prayed that the Order-in-Original dated 15.09.2015 and Order-in-Appeal dated 15.04.2016 be set aside and allow them to redeem the goods by remitting duty or allow them to re-export the gold on payment of nominal amount of fine and penalty.

4. A personal hearing in the cases was scheduled held on 26.10.2018. Shri P.A. Augustian, Advocate for the Applicants attended the hearing. He re-iterated the submissions filed in Revision Applications and pleaded that gold may be released on Redemption Fine and Personal Penalty for re-export taking a lenient view.

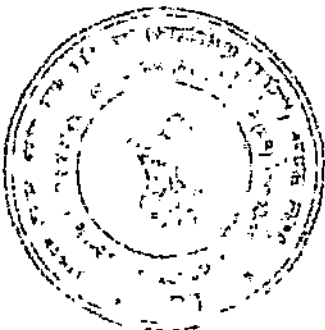
5. The Government has gone through the case records it is observed that the Applicants, both brothers travelled together and had opted for green channel and submitted Customs Declaration Form as "NIL" declaration and walked through. Both of them had cleared the Green Customs. The Customs Officers



intercepted Applicant No. 2 at the exit gate of the airport and on personal search, recovered the gold concealed in the inner pocket of the pant worn by him. Then he revealed that the said gold was given to him by his brother Applicant No. 1. He also admitted that his brother had already proceeded out through the green channel and exit gate after completion of immigration and Customs clearance and is waiting outside of the Airport. Hence Applicant No. 1 who was waiting outside of Airport was also intercepted by Air Intelligence Customs Officers. With a Search Warrant on 29.11.2014, on search of his Hotel Room it was found that the concealed gold which he had cleared in his inner pocket at the time of Customs cleared was kept in a black canvas shoulder bag which was kept in the Hotel. Further, the recovered 08 pieces of yellow coloured bars weighing 387.08 gms from Shri Murukesh and two pieces of yellow coloured bars weighing 674.59 from Shri Sasikumar was examined by a gold Assayer Shri Antu Jose of M/s Jos Jewellery, Angamaly. On examination, the assayer certified the gold was crude gold bars totally weighing 1061.67 gms with purity of 24 carat (999.0) totally value at Rs. 25,12,209/- (Rupees Twenty Five Lakhs Twelve Thousand Two Hundred and Nine Only) (Assessable Value) and Rs. 28,10,241 (Rupees Twenty Eighty Lakhs Ten Thousand Two Hundred and Forty One Only) (market value).

6. The Government notes that the gold bars were not declared as required under section 77 of the Customs Act,1962 by both the applicants. Therefore the confiscation of the gold is justified.

7. The Government notes that that the gold bars were concealed in the inner pockets of the trousers of both the Applicants. 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 Applicants has blatantly tried 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 Applicants had no intention of declaring the gold to the authorities and had Shri Murukesh was not



2



intercepted before the exit, then both the Applicants would have taken out the gold without payment of customs duty.

8. The above acts have therefore rendered the Applicants 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. In view of the above the impugned Order in Appeal is upheld and both applications are held liable to be dismissed.

9. Both the Revision applications are dismissed.

10. So, ordered.


(ASHOK KUMAR MEHTA)

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

ORDER No. ⁸⁶³⁻⁸⁶⁴ /2018-CUS (SZ) / ASRA / MUMBAI/

DATED 29.10.2018

To,

1. Shri Sasikumar Karuvanthur Achuthan,
C/o Shri P.A. Augustian P.A.,
Advocate,
Faizal chambers, Pulleppady Cross Road,
Cochin 682 -018.
2. Shri Murukesh Karuvanthur Achuthan,
C/o Shri P.A. Augustian P.A.,
Advocate,
Faizal chambers, Pulleppady Cross Road,
Cochin 682 -018.

Copy to:

1. The Additional Commissioner of Customs (Adj-AIR), Cochin International Airport Ltd, Nedumbassary, Kerala.
2. Commissioner of Customs (Appeals), Custom House, Cochin - 9
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

