



## GOVERNMENT OF INDIA

## MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE) 8th Floor, World Trade Centre, Centre – I, Cuffe Parade,

Mumbai-400 005

F.No. 373/134/B/16-RA 2104

Date of Issue 2011 2018

ORDER NO. 865 /2018-CUS (SZ)/ASRA/MUMBAI/ DATED \$9.10.2018 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: Shri Puthiya Paramban Praveen

Respondent: Additional Commissioner of Customs, Chennai

Subject: Revision Application filed, under Section 129DD of the

Customs Act, 1962 against the Order-in-Appeal C.Cus-I

No. 123/2016 dated 29.02.2016 passed by the Commissioner of Customs (Appeals-I), Chennai.



## **ORDER**

This Revision Applications have been filed by Shri Puthiya Paramban Praveen (herein referred to as Applicants) against the Order-in-Appeal C.Cus-I No. 123/2016 dated 29.02.2016 passed by the Commissioner of Customs (Appeals-I), Custom House, Chennai.

- 2. The brief issue of the cases is the applicant had arrived at Internation! Air Port, Chennai from Abu Dhabi by Jet Airways Flight No.525 dated 31.10.2014 after declaring as Nil in the Customs Declaration Card was walking out through the exit of the Customs Arrival Hall was intercepted by the Custom Officer. On examination of the white colour cardboard carton box carried by him, it was found that it was containing alloy wheel for automobile and the four crude yellow colour metals blocks were concealed in the four cavities of the alloy wheel. The Government Approved Gold Appraiser certified them to be four numbers of crude gold bock each of 24 carat purity all totally weighing 2490.5 grams and market value of Rs. 67,16,878/- (Rupees Sixty Seven Lakhs Sixteen Thousand Eight Hundred and Seventy Eight Only). After due process of the law. the Additional Commissioner Customs(Adjudicating-AIR), Chennai vide Order-in-Original No. 322/2015-16 dated 31.10.2015 ordered absolute confiscation of the weighing 2490.5 grams and market value of Rs. 67,16,878/- (Rupees Sixty Seven Lakhs Sixteen Thousand Eight Hundred and Seventy Eight Only) under Section 111(d) & (l) of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992 and imposed a personal penalty of Rs. 7,00,000/-(Rupees Seven Lakhs Only) under Section 112(a) and (b) of the Customs Act, 1962. Aggrieved, the appellant then filed appeal with the Commissioner of Customs(Appeals-I), Chennai who vide Order-in-Appeal C.Cus-I No. 123/2016 dated 29.02.2016 rejected the Appeal and upheld the Order-in-Original dated 31.10.2015.
- 3. Aggrieved with the above order, the Applicant has filed a condonation of delay Application pleading that the delay in filing the Revision Application and the Revision Application of delay Application pleading that the delay in filing the Revision Application of the Revision Application pleading that the delay in filing the Revision Application of the Revision A

by 22 days may be condoned. The Revision Application has been filed on the following grounds:

- 3.1 He was working abroad for more than 2 years and is eligible to import gold on payment of duty as applicable. Hence it is not liable for confiscation.
- 3.2 He had not concealed any dutiable or prohibited items which attract the provisions of Section 111(i) of Customs Act. Rather the gold was seized before making declaration and he had the intension to disclose the gold which was in his possession.
- 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 his.
- 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 liew 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 He prayed that the Order-in-Original dated 31.10.2015 and Order-in-Appeal dated 29.02.2016 be set aside and allow him 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 Applicant attended the hearing. He re-

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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 facts of the case. In the interest of justice, delay of 22 days in filing this Revision Application is condoned and Revision Application is being decided on merits. The Government notes that the crude gold bars were not declared as required under section 77 of the Customs Act,1962 by the applicant. Therefore the confiscation of the gold is justified.
- 6. The Government observed that the Applicants, had opted for green channel and submitted Customs Declaration Form as "NIL' declaration and walked through. The Customs Officer intercepted him at the exit gate of the airport and he was carrying white colour cardboard carton box containing alloy wheel for automobile and in the four cavities of the alloy wheel concealed crude gold block totally weighing 2490.5 grams and market value of Rs. 67,16,878/- (Rupees Sixty Seven Lakhs Sixteen Thousand Eight Hundred and Seventy Eight Only).
- 7. The Government notes that that the crude gold bars were concealed in four alloy wheel. 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 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 had the Applicant not intercepted before the exit, then he 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 vide Order-in-Original No. 322/2015-16 dated 31.10.2015 has rightly confiscated the gold absolutely and imposed a penalty and the Commissioner(Appeals) has rightly upheld the Order-in-Original. In view of the above the impugned Order-in-Appeal C.Cus-I No. 123/2016 dated 29.02.2016 is upheld as legal and proper.
- 9. Revision Application is dismissed.

10. So, ordered.

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

ORDER No. 865/2018-CUS (SZ) /ASRA/MUMBAI

DATED 29.10.2018

To,

ATTESTED

Shri Puthiya Paramban Praveen C/o Shri P.A. Augustian P.A., Advocate, Faizal chambers, Pulleppady Cross Road, Cochin 682 -018.

B. LOKANATHA REDDY Deputy Commissioner (R.A.)

## Copy to:

- 1. The Additional Commissioner of Customs(Adj-AIR), Chennai Commissionerate, New Custom House, Meenamakkam, Chennai 600 027.
- 2. Commissioner of Customs(Appeals-I), 60, Rajai Salai, Custom House, Chennai 600 001.
- 3. Sr. P.S. to AS (RA), Mumbai.

4/ Guard File.

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