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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 20/11/2018

ORDER NO. 865 /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 : 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.



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 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 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 redéem 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-



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.

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29 X 18

(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,

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

ATTESTED

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.
5. Spare Copy.

