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SPEED POST

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No.373/217/B/16-RA/2018

Date of Issue 29.11.2018

\_ORDER NO. 868 /2018-CUS (SZ) / ASRA / MUMBAI/ DATED  
30.10.2018 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.

Applicant : Shri Abdul Gafoor Palayil.

Respondent : Commissioner of Customs, Airport,  
Bengaluru.

Subject : Revision Application filed, under  
Section 129DD of the Customs Act,  
1962 against the Order-in-Appeal No.  
485/2016 dated 30.06.2016 passed by  
the Commissioner of Customs  
(Appeals), Bangalore.

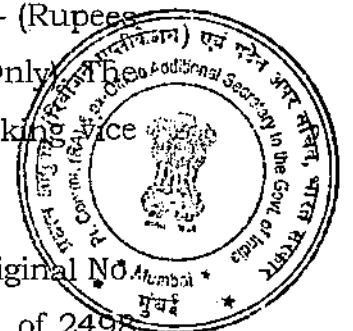


ORDER

This revision application has been filed by Shri Abdul Gafoor Palayil (herein after referred to as the "Applicant") against the Order in Appeal 485/2016 dated 30.06.2016 passed by the Commissioner of Customs (Appeals), Bangalore.

2. The brief facts of the case are that the Customs Officers at Kempegowda International Airport (KIA), Bengaluru intercepted the applicant while he was exiting out of the green channel. On suspicion, the baggage of the applicant was checked in presence of independent witnesses. The baggage was searched and found to contain one machine made up of steel with marking "RECORD 53 MADE IN ENGLAND" used for wood work. Physical examination of the machine indicated that the machine was not in original form and some welding and grinding work had been done. The machine was scanned with the x-ray and the scanning machine. On reasonable belief that some metallic articles are concealed inside the said machine, it was cut open. The two yellow color rods and one metal bar recovered from the wood working machine appeared to be made of gold. The applicant admitted them to be gold bar and gold rods and the same were concealed in the wood working machine so as to prevent their detection by the customs officers and that he intended to clear the said gold without declaration and without payment of applicable Customs Duty. On appraisal, the total gold found was 2498 gms having value of Rs. 67,37,106/- (Rupees Sixty Seven Lakh Thirty Seven Thousand One Hundred Six Only). The impugned goods were seized alongwith the broken wood working machine with its cut open parts used for concealing the gold.

3. The Original Adjudicating Authority, vide its Order in Original No. 598/2015-16 dated 30.01.2016 ordered absolute confiscation of 2498 gms. of gold valued at Rs. 67,37,106/- (Rupees Sixty Seven Lakh Thirty



Seven Thousand One Hundred Six Only) under Section 111 (d), (i), (l) and (m) of the Customs Act, 1962. It was also ordered the absolute confiscation of the broken wood working vice machine with its cut open parts used for concealing said gold articles under Section 119 of Customs Act, 1962. A penalty of Rs. 20,10,000/- under Section 112 and Rs. 13,40,000/- under Section 114AA of the Customs Act, 1962 was imposed on the Applicant.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner (Appeals), Bangalore. The Appellate Authority, vide its Order-in-Appeal No.485/2016 dated 30.06.2016 rejected the appeal of the Applicant on the grounds of non-maintainability on account of non-compliance to the mandatory deposit envisaged under Section 129E 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 appellate authority failed to appreciate the gold weighing 2498 gms valued at Rs. 67,37,106/- (Rupees Sixty Seven Lakh Thirty Seven Thousand One Hundred Six Only) is lying with the department and it is sufficient to cover the penalty imposed on the applicant. Thus the impugned order in appeal without extending opportunity for hearing the matter is illegal and unsustainable.

5.2 the applicant has not concealed any dutiable or prohibited items which attract the provisions of Section 111(i) of the Customs Act.

5.3 the adjudicating authority failed to appreciate that when the goods are not prohibited, the option to pay redemption fine in lieu of confiscation to be exercised.

5.4 the applicant has not imported any prohibited goods for imposing heavy penalty.



5.5 the applicant has also filed an application for condonation of delay of 15 days in filing the Revision Application. The advocate of the applicant was admitted to the hospital due to fracture in the left leg and doctors had advised complete rest for six weeks. This has caused delay in filing the Revision Application.

6. The applicant has therefore requested that the order in original as well as order in appeals may be set aside. It is also requested to allow the applicant to redeem the gold on payment of fine in lieu of confiscation.

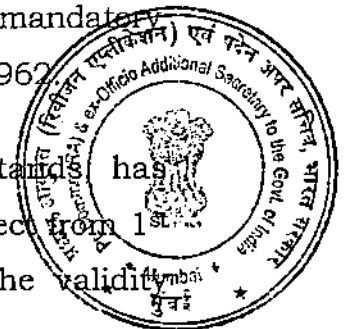
7. A personal hearing in the case was held on 26.10.2018, the Advocate for the respondent Shri Augustian P.A attended the hearing. He re-iterated the submissions filed in Revision Application.

8. The applicant has filed the application for condonation of delay of 15 days in filing the instant Revision Application. The cause submitted for the delay appears to be genuine and sufficient and hence the delay is condoned.

9. The Government has gone through the facts of the case. The applicant has prima facie claimed relief with request to set aside the order in original and order in appeals. The relief was also claimed against the absolute confiscation of seized gold and waiver of penalty imposed on him.

10. The Government also notes that the appellate authority has rejected the appeal filed by the appellants on the grounds of non-maintainability on account of non-compliance to the mandatory deposit envisaged under Section 129E of the Customs Act, 1962.

11. The Government finds that Section 129E, as it stands has been substituted by the Act 21 of 2014 as brought into effect from 1st October 2014. Further, to consider the challenge to the validity



of Section 129E of the Act, it would be appropriate to extract the Section 129E of the Act as amended, which reads thus:-

**129-E. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal** - The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal -

(i) under sub-section (1) of section 128, unless the appellant has deposited seven and a half per cent of the duty demanded or penalty imposed or both, in pursuance of a decision or an order passed by an officer of customs lower in rank than the Commissioner of Customs;

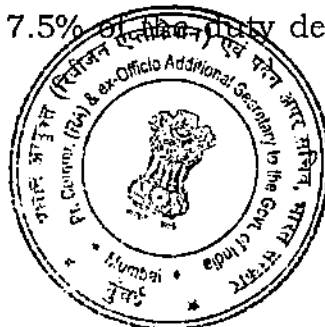
(ii) against the decision or order referred to in clause (a) of sub-section (1) of section 129-A, unless the appellant has deposited seven and a half per cent of the duty demanded or penalty imposed or both, in pursuance of the decision or order appealed against;

(iii) against the decision or order referred to in clause (b) of sub-section (1) of section 129-A, unless the appellant has deposited 10 per cent of the duty demanded or penalty imposed or both, in pursuance of the decision or order appealed against;

Provided that the amount required to be deposited under this section shall not exceed rupees ten crores:

Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014."

12. As seen from a plain reading of the provision, Section 129E provides for deposit of certain percentage of duty demanded or penalty imposed or both, as a condition precedent for the appellate authority to entertain an appeal. Sub-clause (i) and (ii) of Section 129E mandates deposit of 7.5% of the duty demanded or



penalty imposed or both, in case of an appeal before the Commissioner (Appeals) (Section 128A) and before the Tribunal (Section 129A) respectively. Clause (iii) of Section 129E provides for deposit of 10% of the duty demanded or penalty imposed or both in pursuance of the order appealed before CESTAT. The first proviso provides that the amount which is required to be deposited under this section shall not exceed Rs.10 crores.

13. Thus the intention of the Government in amending Section 129E by the amending Act in question needs to be noted. Prior to the amendment, in view of the powers and discretion conferred with the appellate authority to waive/dispense with the pre-deposit, substantial time was expended on the adjudication of such applications and in deciding issues, as to whether, the contention of the applicant in the stay application, of an undue hardship is being caused, could be accepted to grant an appropriate waiver. Resultantly, orders on the stay application generated further litigation before the higher forums taking a toll on the valuable time of the tribunal delaying the adjudication of the appeals. This undoubtedly caused a serious prejudice to the parties before the Tribunal. Thus the aim of the amended provision is also to curtail litigation which had assumed high proportions, leaving no time to the appellate authorities to devote the same to important issues. Considering these hard realities and to have a expeditious disposal of the statutory appeals which undoubtedly is a necessary requirement of effective trade, commerce and business, the Parliament in its wisdom amended the provisions of Section 129E of providing deposit of 7.5% and 10% respectively as sub-clauses (i), (ii) and (iii) respectively provide. If such is the aim and insight behind the provision, it certainly cannot be held to be unreasonable, onerous, unfair or discriminatory for two fold reasons. Firstly, the object of a



public policy sought to be achieved by the amendment, namely speedy disposal of the appeals before the appellate authorities is a laudable object and cannot be overlooked, so as to label the provision as unreasonable and onerous and violative of Article 14 of the Constitution. Secondly that the amount which is required to be deposited is not unreasonable from what the earlier (pre amended) regime provided.

14. The Government therefore finds no reason to interfere with the Order-in-Appeal. The impugned order No. 485/2016 dated 30.06.2016 of Commissioner of Customs (Appeals), Bangalore is upheld as legal and proper.

15. The instant Revision Application is accordingly dismissed.

16. So, ordered.

*(Handwritten Signature)*  
30/10/18

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

ORDER No. 868/2018-CUS (SZ) /ASRA/MUMBAI DATED 30.10.2018

To,

Shri Abdul Gafoor Palayil,  
R/o Palayil House, Kuttammassery P.O.,  
Thottattummughom Kerala- 683 105.

**ATTESTED**

*(Handwritten Signature)*  
28/11/18  
**S.R. HIRULKAR**  
Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner of Customs, Airport, Bengaluru.
2. The Commissioner of Customs (Appeals-I), Bangalore.
3. Shri P.A. Augustian, Advocate, Faizel Chambers, Pullepady Cross Road, Cochin- 682 018.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard File.
6. Spare Copy.

