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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.373/36/B/16-RA

Date of Issue

28/11/2018

ORDER NO. 874 /2018-CUS (SZ) / ASRA / MUMBAI/ DATED
31.10.2018 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.

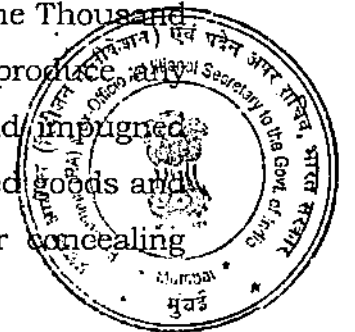
Applicant : Pariyarath Abdul Khader Salim.
Respondent : Commissioner of Customs, Airport,
Chennai.
Subject : Revision Application filed, under
Section 129DD of the Customs Act,
1962 against the Order-in-Appeal No.
C.Cus-I No. 679/2015 dated
30.10.2015 passed by the
Commissioner of Customs (Appeals-I),
Chennai.



ORDER

This revision application has been filed by Pariyarath Abdul Khader Salim (herein after referred to as the "Applicant") against the Order in Appeal C.Cus-I No. 679/2015 dated 30.10.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. The brief facts of the case are that the Superintendent of Customs, AIU, Anna International Airport, Chennai intercepted Shri Pariyarath Abdul Khadar Salim who had arrived from Singapore on 30.11.2013. The applicant was walking through the Green Channel with his one checked-in luggage and one hand bag. The applicant had filled up the value of goods carried by him as "Nil" in his Customs Declaration Card. On suspicion, the baggage of the applicant was checked in presence of independent witnesses. The applicant was questioned as to whether he was carrying any gold / gold jewellery or crude gold in his baggage or on his person to which he replied in the negative. The baggage was searched and found to contain two "Selleys all clear multipurpose sealent" tubes wrapped in brown colour cellophane tape were found. As the said tubes were very heavy, they were cut opened and one yellow colour metal piece wrapped in black colour carbon was recovered from each of the two tubes. The Government of India approved appraiser certified that the said yellow colour metal pieces were gold rods of 24K weighing of 484 gms and valued at Rs. 14,69,424/- (Rupees Fourteen Lakh Sixty Nine Thousand Four Hundred Twenty Four). The applicant could not produce any valid permit / licence / document for legal import of said impugned goods. The Customs Officers, therefore, seized the impugned goods and the two "Selleys all clear multipurpose sealent" used for concealing gold.



3. The Original Adjudicating Authority, vide its Order in Original No. 195/09/07/2015 dated 09.07.2015 ordered absolute confiscation of 484 gms. of gold valued at Rs. 14,69,424/- (Rupees Fourteen Lakh Sixty Nine Thousand Four Hundred Twenty Four)under Section 111 (d) & (l) of the Customs Act,1962 read with Foreign Trade (Development and Regulation) Act, 1992. It was also ordered the absolute confiscation of two “Selley's all clear multipurpose sealent” tubes used for concealing gold under Section 119 of Customs Act, 1962. A penalty of Rs. 1,40,000/-- under Section 112(a) of the Customs Act, 1962 was imposed on the Applicant.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals-I), Chennai. The Appellate Authority, vide its Order-in-Appeal No. C.Cus-I No. 679/2015 dated 30.10.2015 upheld the order in original.

5. Aggrieved with the above order the Applicant has filed this revision application interalia on the grounds that.

5.1 the orders are not legal and proper.

5.2 the applicant has nor imported any items for trade or business but for bona fide use.

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

5.4 even if it is assumed that the goods are liable for confiscation, the gold brought by the applicant is not falling under the category of prohibited goods. Therefore goods are not liable for confiscation.

5.5 while framing the provision under Section 125 of Customs Act, 1962, legislature has not left any discretionary power on adjudication authority on goods which are freely importable and as per said provision, adjudicating authority shall allow the



importer to redeem the goods on payment of fine in lieu of confiscation.

5.6 even if it is assumed that the gold imported by the applicant is liable for confiscation, there was no reason or justification to deny the request of the applicant for allowing re-export of the same.

5.7 imposing of huge penalty is unsustainable considering the fact that the applicant has not committed any illegality by bringing the gold.

6. The applicant has therefore requested that the order in original as well as order in appeals may be set aside. The applicant also requested to allow him to redeem the impugned gold rods 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 on behalf of the applicant. He re-iterated the submissions filed in Revision Application.

8. The Government has gone through the case records and it is seen that the applicant arrived at the Chennai Airport on 30.11.2013 and was intercepted by the Customs Officers and examination his baggage resulted in the recovery of two gold rods totally weighing 484 gms valued at Rs. 14,69,424/- ingeniously concealed in the two "Selleys all clear multipurpose sealent" tubes wrapped in brown colour cellophane tape.

9. The Original Adjudicating Authority absolutely confiscated 484 gms. of gold valued at Rs: 14,69,424/- under Section 111 of the Customs Act, 1962 r/w Foreign Trade (Development and Regulation) Act, 1992 and two "Selleys all clear multipurpose sealent" tubes used for concealing gold under Section 119 of Customs Act, 1962. A penalty



of Rs. 1,40,000/-- under Section 112(a) of the Customs Act, 1962 was imposed on the Applicant. The Commissioner of Customs (Appeals-I), Chennai vide his order C.Cus-I No. 679/2015 dated 30.10.2015 rejected the Appeal filed by the Applicant.

10. The Government notes that the applicant has ingeniously concealed two gold bars totally weighing 484 gms in the "Selleys all clear multipurpose sealent" tubes with the clear intent not to declare it to the Customs Officers and to clear them clandestinely without declaration and without payment of Customs duty. Filing true and correct declaration under the Customs Act, 1962 is an absolute and strict obligation of any passenger. In the instant case, the applicant, on his arrival at Airport, was asked by the Customs Officers as to whether he was carrying any gold / gold jewellery or crude gold in his baggage or on his person to which he replied in the negative. Further, the applicant had filled up the declaration slip with 'Nil' remarks. The act on the part of applicant clearly shows his intention to clear the gold bars without payment of Customs Duty.

11. There is no doubt that the applicant has contravened the provisions of Customs Act, 1962. Therefore, the seized gold bars are liable for absolute confiscation under the provisions the Customs Act, 1962 as the applicant has deliberately concealed the seized gold to avoid detection and to dodge the Customs Authorities and smuggle out the same without payment of appropriate duty. This clearly indicate *mens-rea*, 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 bars without payment of Customs duty. In view of above mentioned observations, the Government inclined to agree with the Order in Appeal and holds that the impugned gold has been rightly confiscated absolutely and the penalty has been rightly upheld. Hence the impugned Revision Application is liable to be dismissed.

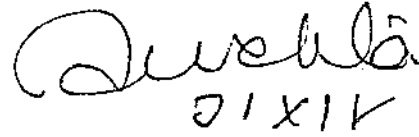
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12. Taking into consideration the forgoing discussion, Government upholds the Order in Appeal No. C.Cus-I No. 679/2015 dated 30.10.2015 and the impugned Revision Application is dismissed.

15. So, ordered.



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

ORDER No. 874/2018-CUS (SZ) /ASRA/MUMBAI DATED 31.10.2018

To,

Pariyarath Abdul Khader Salim.,
R/o Pariyarath House,
Thaikkaittukara P.O.,
Aluva, Kerala- 683 106.

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.

ATTESTED


S.R. HIRULKAR
Assistant Commissioner (R.A.)

