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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No. 373/07/B/17-RA  
F. No. 373/08/B/17-RA / 2139

-Date of Issue 29.11.2018

ORDER NO. <sup>884-</sup>895/2018-CUS (WZ) / 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.

Applicant 1 : Shri Abdul Raheem Mohamed Nameeq  
Applicant 2 : Shri A Nasar @ Mohamed Yasar

Respondent : Commissioner of Customs (CSI Airport), Mumbai

Subject : Revision Application filed, under Section 129DD of the Customs  
Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-  
APP-569 to 572/16-17 dated 30.01.2017 passed by the  
Commissioner of Customs (Appeals) Mumbai-III.



ORDER

These revision applications has been filed by Shri Abdul Raheem Mohamed Nameeq and Shri A Nasar @ Mohamed Yasar ( herein after referred to as the "Applicant 1 and Applicant 2 ") against the order in Appeal No. MUM-CUSTOM-PAX- APP-569 TO 572/16-17 dated 30.01.2017 passed by the Commissioner of Customs (Appeals) Mumbai-III.

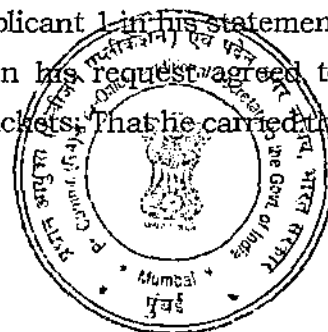
2. Briefly stated facts of the case are that the Applicants were intercepted at the Chennai Central Railway station on 28.06.2012 and 12 gold bars totally weighing 1200 grams valued at Rs. 36,07,200/- ( Rupees Thirty Six Lakhs Seven thousand two hundred ) were recovered from them. Investigations revealed that the gold bars were smuggled into India from Sri Lanka by the Applicant 1 from the CSI Airport, Mumbai by concealing the same in his rectum. The Applicant then travelled to Chennai by train and was apprehended when delivering the gold to the Applicant 2. Since a common issue is involved in both these Revision Applications and as they are being represented by the same advocate Shri Palanikumar, these Revision Applications are being disposed by a common order.

3. The Original Adjudicating Authority, vide its Order in Original No. ADC/ML/ADJN/30/2013-14 dated 31.10.2013 absolutely confiscated the impugned gold bars, and imposed a penalty of Rs. 10,00,000/- on Applicant 1 and Rs. 5,00,000/- on Applicant 2 under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by this order the Applicants both filed appeals with the Commissioner (Appeals)Mumbai-III, who vide his Order-in-Appeal No MUM-CUSTOM-PAX- APP-569 to 572/16-17 dated 30.01.2017 the rejected the Appeal of the Applicants..

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

5.1 The order of the appellate authority is against law, weight of evidence and circumstances and probabilities of the case; The Appellate authority has simply glossed over the judgements and the points raised in the appeal grounds and reason has been given to reject the Appeal; Applicant 1 in his statement stated that he was introduced to one Shri Nilofer, and on his request agreed to carry the golf for monetary consideration and air travel tickets. That he carried the gold in his rectum

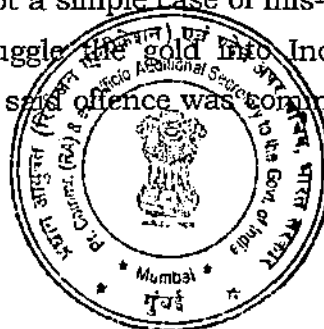


and ejected them after clearing the Customs and took the train to Chennai to be handed over to Applicant 2; Applicant 2 has admitted that he is working for one Shri Ameen who deals in gold bars and he was directed to collect the gold bars from a person who had come from Colombo via Mumbai; The adjudication authority has not exercised the option of section 125 of the Customs Act, 1962; The Applicants have retracted their statements given before the officers as the statements were recorded by third degree methods; This is a first case registered against the Applicant and he is not a die hard smuggler; Gold is not a prohibited item; he is the owner of the said gold and he is claiming the same and also ready to pay customs duty; The seized gold was not smuggled but purchased from the local market, this is a case of town seizure; The Hon'ble Supreme Court (full bench) in the case of Om Prakash vs UOI states that the main object of the enactment of the said Act was the recovery of Excise Duties and not really to punish for infringement of its provisions; Goods must be prohibited before import or export simply because of non-declaration goods cannot become prohibited; Even assuming without admitting he has not declared the gold it is only a technical fault as the Applicant is a foreign national;

5.2 The Revision Applicant cited judgments in support of his case and prayed for release of the gold under section 125 of the Customs Act, 1962 and reduce the personal penalty and thus render justice.

6. A personal hearing in the case was held on 25.09.2018, the Advocate for the respondent Shri S. Palanikumar attended the hearing he re-iterated the submissions filed in Revision Application and pleaded for release of the gold for re-export on redemption fine and penalty. Nobody from the department attended the personal hearing.

7. The Government has gone through the case records it is observed that the gold recovered when it was being handed over by the Applicant 1 to Applicant 2. The Applicants have both conceded that they were aware that they were dealing in smuggled gold. The Applicant 1 has admitted that he had concealed the impugned gold indigenously in his rectum and has succeeded in getting past the Customs Authorities at CSI Airport, Mumbai. 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

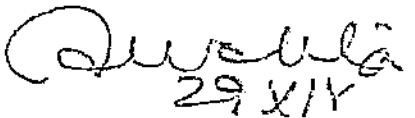


clever manner and clearly indicates mensrea, and that the Applicant had no intention of declaring the gold to the authorities and if he was not intercepted before the exit, the Applicant would have taken out the gold without payment of customs duty. The release of the gold can be entertained if the gold was properly declared as required under Section 77 of the Customs Act, 1962. The Applicant 2 was also aware that he was dealing in smuggled gold. Moreover, both the Applicants have admitted to have dealt with similar consignments several times in the past.

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 has rightly confiscated the gold absolutely and imposed a penalty. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority. Government is disinclined to interfere with the order of the Commissioner (Appeals). Both the Revision Applications therefore are liable to be dismissed.

9. Both the Revision Applications are accordingly dismissed.

10. So, ordered.

  
29/10/18

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

ORDER No. <sup>884-885</sup> /2018-CUS (WZ) /ASRA/MUMBAI.

DATED 29.10.2018

To,

Shri Abdul Raheem Mohamed Nameeq  
Shri A Nasar @ Mohamed Yasar  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High court, 2<sup>nd</sup> Floor,  
Chennai - 600 001.

Copy to:

1. The Commissioner of Customs, Bengaluru.
2. The Commissioner of Customs (Appeals), Bengaluru.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard File.
5. Spare Copy.

