



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/189/B/16-RA / 707

Date of Issue 29.11.2018

ORDER NO. 907/2018-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 : Shri Abdul Mubeen

Respondent : 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. 202/2016 dated 31.03.2016 passed by the Commissioner of Customs (Appeals-I) Chennai.

ORDER

This revision application has been filed by Shri Abdul Mubeen (herein after referred to as the "Applicant") against the order in Appeal C.Cus-I No. 202/2016 dated 31.03.2016 passed by the Commissioner of Customs (Appeals-I) Chennai..

2. Briefly stated facts of the case are that the Officer of DRI on the basis of specific intelligence intercepted the Applicant at the Chennai International Airport on 04.08.2014. The Officers then took the Applicant back inside the Aircraft and on rummaging the Aircraft recovered three gold bars weighing one kg each, concealed in the life vest pouch, beneath the seat cushion in the Aircraft. In his statement the Applicant stated that the gold was given to him by a contact in Dubai and asked him to conceal the gold and a complete search of his baggage resulted in the in the life vest pouch, beneath the seat cushion to be recovered from the aircraft by the 'another person.

3. The Original Adjudicating Authority, vide its Order in Original No. 434/27.12.2015 confiscated the impugned gold bars, totally weighing 3 kgs valued at Rs. 85,25,160/- (Rupees Eighty five lakhs Twenty five thousand One hundred and Sixty) under Section 111 (d) and e, (l), (m) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, 1992, and imposed a penalty of Rs. 4,50,000/- under Section 112 (a) of the Customs Act, 1962. A penalty of Rs. 2,00,000/- under Section 114AA was also imposed on the Applicant.

4. Aggrieved by this order the Applicant as well as the department filed an appeal with the Commissioner (Appeals). Commissioner of Customs (Appeals) Chennai, vide his Order-in-Appeal C. Cus-I No. 202/2016 dated 31.03.2016 rejected the Appeal of the Applicant.

5. Aggrieved with the above order the Applicant has filed this revision application alongwith an application for condonation of delay of 5 days interalia on the grounds that.

5.1 the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The Applicant is an NRI and is eligible to import gold upto 1 kg; Applicant had not crossed the Customs barrier and as such the import had not been completed; Baggage is not confined to merely bonafide baggage within the meaning of Section 79 of the Customs Act, 1962; The lower authority ought not to have imposed penalty; Gold is not a prohibited item as per the EXIM policy; The gold has been seized from the Aircraft this would make airborne goods passing through

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India liable to confiscation; As the goods had not yet crossed the Customs barrier the question of smuggling does not arise; The Applicant had stayed abroad for more than 1 year and is an eligible passenger; The Applicant was intercepted at the flight exit gate and not at the Customs Exit gate thus he did not get the opportunity to clear immigration and Customs; the Apex court in the case of Hargovind Das vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has pronounced that the quasi judicial authorities should use the discretionary powers in a judicious and not an arbitrary manner and option to allow redemption is mandatory; The Appellate authority ought not to have set aside the order in original when gold is not prohibited and the passenger is eligible for concessional duty;.

5.3 The Revision Applicant cited judgments in support of his case and prayed for release of the gold for re-export and set aside the personal penalty and thus render justice.

6. A personal hearing in the case was held on 25.10.2018, the Advocate for the respondent Shri A. Ganesh attended the hearing. He re-iterated the submissions filed in Revision Application and pleaded that the Order in Appeal be set aside and the order in original be upheld and the gold be allowed for re-export on redemption fine and penalty. Nobody from the department attended the personal hearing.

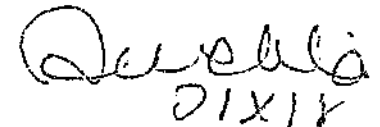
7. The Government has gone through the case records. In the rest of justice the delay of 5 days is condoned. It is observed that the gold recovered from the life vest pouch, beneath the seat cushion in the Aircraft. The Applicant has concealed the gold deliberately so as to enable an accomplice to collect the gold later. It is clear that the modus operandi, a common one is to leave the gold in the Aircraft to be collected by another person who has the access to the Aircraft and remove the gold by avoiding detection and evade Customs duty and smuggle the gold into India. Government also notes that the Applicant in his statement recorded immediately after the seizure has admitted that the gold was given to him by another person to be concealed in the Aircraft for monetary consideration. 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 by concealing the gold in order to hoodwink the Customs Officers. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and that the Applicant had willfully taken part in the smuggling operation and if he was not intercepted before the exit, the gold would have been taken out without payment of customs duty.

9. 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 Appellate authority has rightly confiscated the gold absolutely and upheld the penalty. The impugned Revision Application is therefore liable to be dismissed. Government however also holds that no penalty is imposable under section 114AA of the Customs Act, 1962 as this provision is not attracted in baggage cases. The penalty under 114AA of the Customs Act, 1962 therefore needs to be set aside.

10. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C.Cus-I No. 393 & 394/2015 dated 24.08.2015 passed by the Commissioner of Customs (Appeals-I) Chennai is upheld as legal and proper. The penalty of Rs. 2,00,000/- (Rupees Two lakhs) imposed under section 114AA of the Customs Act, 1962 in the Order-In-Original issued by the Original Adjudicating Authority has been incorrectly imposed, the same is therefore set aside.

11. The impugned Revision Application is disposed off on terms mentioned supra.

12. So, ordered.



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

ORDER No. 907/2018-CUS (S/Z) /ASRA/MUMBAI

. DATED 31.10.2018

To,

Shri Abdul Mubeen
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Chennai - 600 102.

Copy to:

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