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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
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Mumbai-400 005

F.No. 373/193/B/16-RA

19206

Date of Issue 29.11.2018

ORDER NO. 913/2018-CUS (S/Z) / 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 Haresh Gyanchand Ahuja

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. 204/2016 dated 30.03.2016 passed by the Commissioner of Customs (Appeals) Chennai.

ORDER

This revision application has been filed by Shri Haresh Gyanchand Ahuja (herein after referred to as the "Applicant") against the order in Appeal C.Cus-I No. 204/2016 dated 30.03.2016 passed by the Commissioner of Customs (Appeals) Chennai..

2. Briefly stated facts of the case are that the Applicant was intercepted at the Chennai International Airport on 21.12.2014 and a complete body search was conducted which resulted in recovery of four cut pieces of gold totally weighing 770 grams valued at Rs. 20,98,250/- (Rupees Twenty Lakhs Ninety eight thousand Two hundred and Fifty). The gold was recovered from his rectum.

3. The Original Adjudicating Authority, vide its Order in Original No. 430/27.12.2015 absolutely confiscated the impugned gold bars, 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. 2,00,000/- under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner (Appeals). Commissioner of Customs (Appeals) Chennai, vide his Order-in-Appeal C. Cus-I No. 204/2016 dated 30.03.2016 the rejected the Appeal of the Applicant.

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

5.1 the order of the Commissioner (Appeals) is contrary to the law, weight of evidence and violates the principles of natural justice; The Applicant was a domestic passenger travelling from Tiruchirapalli to Chennai and hence there is no need for submitting a declaration under section 77 of the Customs Act,1962; The order of the Commissioner (Appeals) setting aside the absolute confiscation in a similar matter in Appeal No. C4-I/96/O/2014-AIR in Rani Sambandham case is squarely applicable to this case; Section 111 is attracted only in the case of goods under import; The impugned gold does not have any foreign markings and hence section 123 is not attracted; The lower authority ought to have seen that he has not imported any gold and therefore section 111 of the Customs Act,1962 is not attracted; There is no complaint of the escort officers that there was any midair contact and there is no

passenger manifest to show that any passenger from abroad is in the flight; The gold does not have any foreign markings; The statement given by the Applicant was retracted during his bail application; Absolute confiscation is not warranted in this case; Just because the Applicant arrived on an international flight, his goods do not become foreign goods; The Applicant can for safety sake keep the gold anywhere and suspicion however grave cannot take the place of evidence; The Applicant further prayed that the department has not followed the procedure in a case of body concealment of the gold and therefore absolute confiscation needs to be set aside. The imposition of 10% penalty imposed under section 112 is harsh and needs to be set aside.

5.3 The Revision Applicant cited judgments in support of his case and prayed for release of the gold 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 gold be allowed for re-export on redemption fine and penalty. Nobody from the department attended the personal hearing.

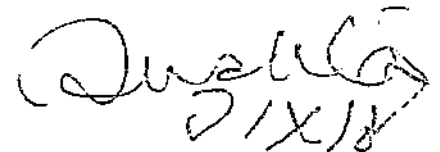
7. The Government has gone through the case records it is observed that the gold recovered from the Applicant was indigenously concealed in his rectum. It is clear that the concealment was planned so as to avoid detection and evade Customs duty and smuggle the gold into India. Government notes that the Applicant has in his statement recorded immediately after the seizure has admitted that the gold was given to him on the flight, by an international passenger. In his appeal the Applicant had claimed that the gold was purchased in Trichy, however he has not produced any invoices/bills in support of this contention. 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 receiving the gold mid-air and has taken precaution to conceal the gold in order to hoodwink the Customs Officers. The claim that the gold is domestic and purchased in India is an attempt to secure the release the gold. 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 and the entire charade has been undertaken to evade customs duty and if he was not intercepted before the exit, the Applicant 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 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.

9. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C.Cus-I No. 204/2016 dated 30.03.2016 passed by the Commissioner of Customs (Appeals) Chennai is upheld as legal and proper.

10. The impugned Revision Application is dismissed.

11. So, ordered.



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

ORDER No. 913/2018-CUS (S Z) /ASRA/MUMBAI

DATED 31.10.2018

To,

Shri Haresh Gyanchand Ahuja
C/o A. Ganesh, Advocate,
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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.