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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. 373/120/B/2018-RA / 2018

Date of Issue 29.11.2018

ORDER NO. 916/2018-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 Kaviyarasan

Respondent : Commissioner of Customs, (Airport), Tiruchirapalli.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
186/2016 dated 20.10.2016 passed by the
Commissioner of Cus and C. Ex. (Appeals),
Tiruchirapalli.

ORDER

This revision application has been filed by Shri Kaviyaran (herein after referred to as the Applicant) against the order no C. Cus No. 186/2016 dated 20.10.2016 passed by the Commissioner of Customs (Appeals), Tiruchirapalli.

2. Briefly stated the facts of the case is that the applicant, arrived at the Chennai Airport on 20.05.2015. He was intercepted by the officers as he attempted through the Green channel without declaration. Examination of his baggage resulted in the recovery of round gold plate weighing 419 grams valued at Rs. 11,52,250/- (Rupees Eleven lakhs Fifty two hundred Two hundred and fifty). The gold bars were concealed in the hollow of the base part of a fan stand carried by the Applicant.

3. The Original Adjudicating Authority vide Order-In-Original No. 19/2016 dated 16.02.2016 ordered for absolute confiscation of the impugned gold under Section 111 (d), and (l) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 2,50,000/- under Section 112 (a) of the Customs Act

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 186/2016 dated 20.10.2016 rejected the Appeal of the Applicant.

5. The applicant has filed this Revision Application interalia on the following grounds that;

5.1 The order of the appellate authority is bad in law, weight of evidence and probabilities of the case; as per the Hon'ble High Court of Mumbai, in the case of Abdulla Kalingal Andu 1994 (719) 349 (Tri-Bom) Ownership of the gold is not a criterion for its eligibility to be imported by a passenger provided he satisfies the condition of stay abroad and those related to payment of duty, prosecution was quashed and gold and silver ordered to be returned; he was all along at the red channel under the control of the officers and never tried to pass the green channel; In case of goods which are not prohibited it is

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mandatory that redemption should be accorded; ; In the case of Peringatil Hamza vs Commissioner of Customs , Mumbai 2014 (309) E.L.T. 259(Tri- Mumbai in the seizure of Rs. 24 lakhs of currency the redemption fine of 10% and penalty of Rupees 2 lakhs was found appropriate; The applicant does not any past history of Customs offences; The Applicant further pleaded that as per the judgement by CEGAT South Zonal Bench, Chennai in the case of Shaikh Shahabuddin vs Commissioner of Customs Chennai has held that absolute confiscation without giving the option of redemption for gold concealed in shaving cream tubes is not proper, and the case was remanded for denovo adjudication;

5.2 The Revision Applicant prays that the Hon'ble Revision Authority may be pleased to set aside both the lower authorities orders and allow the gold for re-export on redemption fine and penalty and thereby render justice.

6. A personal hearing in the case was held on 25.09.2018, the Advocate for the respondent Shri Palanikumar attended the hearing. He re-iterated the submissions filed in Revision Application and pleaded that the redemption fine and penalty be reduced. Nobody from the department attended the personal hearing.

7. The Government has gone through the case records it is observed that the Applicant had concealed the gold the base part of a fan stand carried by the Applicant so as to avoid detection and evade Customs duty and smuggle the gold into India. The aspect of allowing the gold for re-export can be considered when imports have been made in a legal manner. 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. 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.

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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 of Rs. 2,50,000/-. 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. 186/2016 dated 20.10.2016 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

10. Revision Application is dismissed.

10. So, ordered.



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

ORDER No. 916/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 31-10-2018

To,

Shri Kaviyaran
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai - 600 001.

Copy to:

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