

REGISTERED SPEED POST



GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre – I, Cuffe Parade,

Mumbai-400 005

F.No. 373/70/B/16-RA/2198

Date of Issue 29.11.2018

ORDER NO. 921/2018-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 Kuriakose Pazhemadom

Respondent : Commissioner of Customs, Cochin Airport

Subject : Revision Application filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. COC-
CUSTM-000-APP-359/2015-16 dated 19.01.2016 passed by
the Commissioner of Customs(Appeals), Cochin

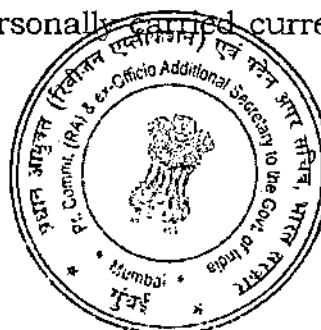


ORDER

This revision application has been filed by Shri Kuriakose Pazhemadom(hereinafter referred to as the "Applicant") against the Order in Appeal No. COC-CUSTOM-000-APP-359/2015-16 dated 19.01.2016 passed by the Commissioner of Customs(Appeals), Cochin.

2. Briefly stated, the facts of the case are that on 23.06.2014, Officers of Customs at Cochin International Airport intercepted the applicant and on search of the passenger recovered two gold chains of 24 carat weighing a total of 618.900 gms valued at Rs. 15,37,650/-(assessable value) and Rs. 17,68,817/-(market value). During a personal search of the applicant by an officer of customs in the presence of Superintendent of Customs, two golden yellow chains were found concealed in two specially made pockets fitted on the inside portion of front side of the trousers which he was wearing. In the presence of two independent witnesses, the golden yellow coloured chain weighing 288.050 gms was recovered from the left side pocket and a chain weighing 330.850 gms was recovered from the right side pocket.

3.1 In the reasonable belief that the chains recovered from the applicant were made of gold, a gold assayer Shri Saju Jose, M/s Jose Jewellery Angamally for examination and report on the chains recovered. The assayer certified that the two gold chains were made of 24 carat gold weighing a total of 618.900 gms and totally valued at Rs. 15,37,650/-(assessable value) and Rs. 17,68,817/-(market value). During interrogation and on recording statement of the applicant under Section 108 of the Customs Act, 1962, he stated that he had attempted to smuggle the two gold chains totally weighing 618.900 gms by knowingly concealing the same in the specially made inner pockets of the trousers worn by him. He also admitted that he was aware of the rules regarding import of gold and made the attempt to smuggle them to make some profit. The applicant further admitted that he had personally carried currency notes of UAE Dirhams 90,000

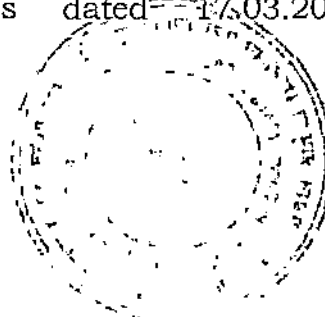


on his departure to Dubai on 22.06.2014 and that the currency notes were concealed in the inner pockets of the trousers worn by him; that he was running a foreign exchange firm named Cee & CEE Gold and Forex Pvt. Ltd. for the last 12 years; that he was well aware that illegal export of foreign currency was a punishable offence in terms of existing laws and that the foreign currency exported by him was collected illegally while he was running the foreign exchange firm. In the light of the facts revealed by the investigation, the applicant was put to notice calling upon him to show cause why the two crude 24 carat gold chains totally weighing 618.900 gms valued at Rs. 15,37,650/- (assessable value) and Rs. 17,68,817/- (market value) should not be confiscated, the black coloured trousers worn by the applicant which was used to conceal the gold chains should not be confiscated, penalty should not be imposed on the applicant, the foreign currency UAE Dhs equivalent to Rs. 14,74,200/- should not be confiscated and penalty should not be imposed on the applicant.

3.2 As the applicant was ineligible for import of gold, the adjudicating authority ordered for absolute confiscation of the concealed gold chains weighing 618.900 gms and imposed penalty of Rs. 2,00,000/- under Section 112(a)/(b) and Section 114AA of the Customs Act, 1962 for his role in smuggling of gold chains and Rs. 1,00,000/- under Section 114AA of the Customs Act, 1962 for his role in smuggling UAE Dhs 90,000/- which was illegally exported to Dubai on 22.06.2014 without declaring the same to the Customs authorities.

4. Aggrieved by the order of the adjudicating authority, the applicant filed appeal before the Commissioner(Appeals). The Commissioner(Appeals) found that the personal search and other corroborative evidences had established beyond doubt that the applicant had willfully engaged in smuggling and violated the provisions of Section 77 of the Customs Act, 1962 and Foreign Trade(D&R) Act, 1992. She further held that the applicant did not fall under the category of "eligible passenger" for legal import of gold from abroad as contemplated in

Notification No. 12/2012-Cus dated 17.03.2012 as amended. The



Commissioner(Appeals) found that in this case, the applicant was not eligible to import gold and his intention was to smuggle gold into the country and evade customs duty. The applicant was therefore found to have contravened the provisions of Section 77 and the provisions of Section 111 of the Customs Act, 1962. She further held that penalties are imposable on any person who, in relation to any goods, does or omits to do an act which renders such goods liable for confiscation. The appellate authority found no reason to dispute the order of the original authority to confiscate the impugned goods. She further found that the order for absolute confiscation and personal penalty imposed on the applicant was commensurate with the act or omission on the part of the applicant and refrained from interfering with it.

5. Aggrieved by the order of the Commissioner(Appeals), the applicant has now filed for revision alongwith an application for condonation of delay. The main grounds of the applicant in the Revision Application are:

- (i) That the gold was not imported for trade or business. The items brought by the applicant were for his bonafide use and hence not liable for confiscation.
- (ii) The adjudicating authority and the appellate authority did not appreciate the fact that the applicant had not concealed any dutiable or prohibited items which attract the provisions of Section 111(i) of the Customs Act.
- (iii) That the applicant had expressed his intention to pay customs duty as applicable and therefore it was the responsibility of the Department to extend an option to pay customs duty or to allow re-export of the goods without fine and penalty.
- (iv) Reliance was placed upon the decision in the case of Mohd. Zia Ul Haque[2014(314)ELT 849(GOI)] wherein the Revisionary Authority had held that when the goods are not prohibited, the adjudicating officer shall give option to pay redemption fine in lieu of confiscation; which discretion has to be exercised judiciously. Therefore, even if the gold



imported by the applicant is liable for confiscation, it was not prohibited goods to order absolute confiscation.

- (v) That the adjudicating authority and the appellate authority had failed to appreciate the fact that at the time of disembarkation, the applicant had disclosed to the officer that he was having some gold ornaments with him and therefore the allegation of mis-declaration was not sustainable.

6. The applicant was granted a personal hearing in the matter on 26.10.2018. Shri Augustin P. A., Advocate appeared on behalf of the applicant. He reiterated the submissions made in the Revision Application and pleaded that the gold be released by levying redemption fine & imposing personal penalty, that the gold be allowed for re-export taking a lenient view.

7. Government has carefully gone through the Revision Application, the order of the original authority, the order of the appellate authority, the submissions made by the applicant at the time of personal hearing and the case records. The delay in filing the revision application is condoned in the interest of justice.

8. The Government observes that the gold chains have been recovered from the person of the applicant; viz. from two specially made pockets fitted the inside portion of the front side of the trousers worn by the applicant. It is observed that such pockets on the inside portion of the front side of the trousers are provided even in readymade trousers. The case clearly cannot be considered as one of ingenious concealment.

9. Government observes that there are a series of judgments where redemption of absolutely confiscated gold/gold jewellery has been allowed. If similar goods have been given option to redeem for re-export on fine earlier, selective absolute confiscation is not called for as there is no effort on the part of the applicant of ingenious concealment. Section 125(1) clearly mandates that



it is within the power of adjudicating authority to offer redemption of goods even in respect of prohibited goods and the option of redemption could be given to person from whose possession impugned goods are recovered. As such, no other person has claimed title in the goods. There are no findings recorded by the lower authorities that the gold was brought for consideration as a carrier by the applicant for monetary consideration.

10. Government observes that gold is not an item the import of which in any circumstances would danger or be detriment to health, welfare or morals of people as whole, and therefore could be released on payment of redemption fine since it does not cause danger or detriment to health. Be that as it may, the facts and circumstances of the case and the conduct of the applicant justifies imposition of penalty to deter him from such misdemeanors in the future. Albeit, a lenient view could be taken while deciding the penalties. No penalty is imposable under Section 114AA of the Customs Act, 1962 in baggage cases.

11. It is observed that the applicant has only made a flailing attempt to counter the charge of having carried currency notes of UAE Dhs 90,000/- on his departure to Dubai on 22.06.2014 concealing them in the inner pockets of the trousers worn by him. Almost the entire grounds of application focus on the recovery of gold chains from the person of the applicant. There is only a passing reference of the issue of illegally exporting currency. Since there are no valid grounds made out by the applicant for this charge, the Government refrains from interfering with the order of the lower authorities in so far as this infraction is concerned.

12. The Government, therefore, allows the applicant an option to redeem the goods on payment of fine and on payment of applicable rate of duty. As far as the quantum of fine is concerned, I find that there are various judicial pronouncements that purpose of Redemption Fine is to wipe out the margin of profit. Accordingly keeping this fact in view, I give option of redemption to the



applicant to redeem the impugned confiscatable goods on payment of fine of Rs. 8,00,000/- (Rupees Eight Lakhs Only). The penalty imposed on the applicant is however reduced from Rs. 2,00,000/- (Rupees Two Lakhs Only) to Rs. 1,75,000/- (Rupees One Lakh Seventy Five Thousand Only) under Section 112(a)/(b). The penalty imposed under Section 114AA of the Customs Act, 1962 is set aside.

13. The Revision Application is partly allowed in the above terms and Order-in-Appeal is modified to that extent.

14. So ordered.

(Signature)
31.10.2018
(ASHOK KUMAR MEHTA)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 92/2018-CUS (SZ) /ASRA/MUMBAI

DATED 31.10.2018

To,
Shri Kuriakose Pazhemadom
Pazhemadom House,
Padinjarekkara P.O.,
Vallakom, Vaikom,
Kottayam

ATTESTED
(Signature)
B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

Copy to:

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

