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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. 373/135/B/16-RA

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Date of Issue 29.11.2018

ORDER NO. 928/2018-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 : Puthen Purayil Sheminadh

Respondent : Commissioner of Customs, Mangalore

Subject : Revision Application filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
315/2016 dated 31.03.2016 passed by the Commissioner of
Customs(Appeals), Bangalore

ORDER

This revision application has been filed by Shri. Puthen Purayil Sheminadh(hereinafter referred to as the "Applicant") against the Order in Appeal No. 315/2016 dated 31.03.2016 passed by the Commissioner of Customs(Appeals), Bangalore.

2. Briefly stated, the facts of the case are that on 13.02.2014, Officers of Customs at Mangalore International Airport(MIA) intercepted the applicant who was walking through the Door Frame Metal Detector(DFMD) of the Customs Area of MIA. Suspecting him to be carrying contraband, they directed him to put his leather belt for x-raying in the Hand Scan Machine in the arrival hall. During scanning, the silver coloured metal buckle of the black coloured leather belt showed characteristics of highly dense metal. Detention of the said belt resulted in detection of the buckle made of gold. Thereafter, the applicants checked-in baggage which was marked "X" at the main scan bearing XH601904, on being subjected to a re-scan and thorough open examination, a hair-styling crimper set stuffed with tongs, brush sleeves and crimping/straightening plates with ceramic coating were found. Since the brush sleeves appeared to be suspicious, they were ripped open revealing two metallic rods made of gold neatly wrapped with black plastic polythene paper. It was observed that nothing had been declared in the Customs Declaration Form against the total value of dutiable goods imported thereby indicating that the applicant was not carrying any dutiable goods. On being examined to ascertain the genuineness, purity and valuation, the two numbers of metallic rods and one belt buckle were certified to be of 24 carat gold, weighing 1022.070 gms together valued at Rs. 30,91,732/- (Rupees Thirty Lakhs Ninety One Thousand Seven Hundred Thirty Two Only). The Customs Officers then seized the said gold concealed in the applicants check-in baggage in the form of one belt buckle, two rods concealed in the leather belt and brush sleeves stuffed in hair styling crimper wire rods in the reasonable belief that the same were being smuggled into India without payment of customs duty. The matter was adjudicated by the Joint Commissioner of Customs, Mangalore vide Order-in-Original No. 79/2014 JC dated 28.11.2014 whereby the impugned goods; i.e. the gold in the form of belt buckle and metallic

rods concealed in his check-in baggage and carried on the person of the applicant were ordered to be absolutely confiscated under the provisions of Section 111 of the Customs Act, 1962 and penalty of Rs. 3,00,000/- was imposed under Section 112(a) and penalty of Rs. 1,50,000/- was imposed under Section 114AA of the Customs Act, 1962.

3. Aggrieved by the adjudication order, the applicants filed an appeal before the Commissioner(Appeals) on the grounds that the adjudicating authority had failed to appreciate that the applicant had not imported any items for trade or business but for the bonafide self-use; that the goods were not liable for confiscation; that no dutiable or prohibited goods had been concealed to attract the provisions of Section 111 of the Act; the declaration made by the applicant corresponds with the goods imported; that the goods were not concealed or misdeclared; that instead of being confiscated the goods should have been released under the provisions of Section 125 of the Act as they were not prohibited goods; that they were placing reliance on case laws; that imposition of heavy penalty was erroneous since there was no attempt to smuggle goods and that the provisions of Section 112(a) and 114AA were not attracted. The applicants therefore prayed for setting aside the order passed by the adjudicating authority with consequential relief. The applicants were granted personal hearing. However, none appeared.

4. After going through the records of the case, the Commissioner(Appeals) found that the applicant had concealed gold in the buckle of his leather belt weighing 349.720 gms and two rods of gold together weighing 672.350 gms concealed in the hair styling crimper set; totally weighing 1022.070 gms and valued at Rs. 30,91,732/- of 24 carat purity. The modus operandi adopted was a novel and ingenious method for concealing gold for clearance through customs to pass it off as bonafide baggage. He further observed that the fact of concealment of gold came to light only after thorough examination. It was only after questioning and scanning the baggage that the ingenious modus of smuggling gold came to light. He therefore held that the impugned pieces of gold of assorted shapes and sizes could not be considered as "bonafide baggage". The

Commissioner(Appeals) placed reliance on the Supreme Court judgment in the case of Omprakash Bhatia vs. Commissioner of Customs[2003(155)ELT 423(SC)] wherein it was held that smuggled goods are "prohibited goods". He further held that the judgment of the Supreme Court in the case of Samynathan Murugesan vs. Commissioner[2010(254)ELT A15(SC)] was squarely applicable in the present case. With regard to the issue of redemption of the impugned goods on payment of fine, he observed that the adjudicating authority had ordered absolute confiscation of the goods and placed reliance on the judgment of the High Court of Kerala in the case of Abdul Razak vs. UOI[2012(275)ELT 300(Ker)]. The Commissioner(Appeals) therefore upheld the order-in-original and rejected the appeal filed by the applicant.

5. Aggrieved by the order of the Commissioner(Appeals), the applicant has filed revision application on the following grounds:

- (i) The applicant has not brought any goods for trade or business and the goods were for his bonafide use and hence not liable for confiscation.
- (ii) The applicant has not concealed any dutiable or prohibited goods which attract the provisions of Section 111(i) of the Customs Act, 1962 and that he had voluntarily disclosed the gold.
- (iii) The applicant had made declaration fully corresponding with the goods imported. The declaration made by the applicant does not attract the provisions of Section 111(m) of the Customs Act, 1962.
- (iv) The case was not one which called for confiscation and penalty in as much as the goods were not concealed nor misdeclared and the goods were for bonafide use of the passenger himself.
- (v) Both the adjudicating authority and the appellate authority had failed to appreciate that even if the imported gold was liable for confiscation, it was not a prohibited good to order absolute confiscation/re-export; that as per Section 125 of the Customs Act, 1962, if the goods are found liable for confiscation and are prohibited goods, it is the discretion of the adjudicating authority to allow the owner of the goods to redeem the same. However, although the goods in the present case are not prohibited goods no option to redeem it on payment of fine was

given. The applicant placed reliance on the judgments in the case of Shaikh Jamal Basha vs. GOI[1997(91)ELT 277(AP)] and Yakub Ebrahim Yuseph vs. CC, Mumbai[2011(263)ELT 685(Tri-Mum)].

- (vi) It was not necessary to impose heavy penalty as it was not prohibited goods which were imported.
- (vii) Penalty cannot be imposed in cases where the goods have been imported for bonafide personal use. Reliance was placed upon the decision reported at [1998(102)ELT 746(Trb)].
- (viii) The adjudicating authority and the appellate authority failed to appreciate that the applicant himself had opened his hand bag and showed the gold bar to the officer and that no contraband items were recovered from the checked in baggage or the body of the applicant.
- (ix) The adjudicating authority and the appellate authority had failed to appreciate that in the interest of natural justice it was the bonafide duty of the proper officer to guide him about the alternative remedies available to him. In the present case, the officer-in-charge did not appraise the applicant about the alternative remedies available.

6. The applicant was granted personal hearing on 26.10.2018. Shri Augustian P. A, Advocate appeared on behalf of the applicant. He reiterated the submissions in the revision application filed. He also pleaded that the gold be allowed to be redeemed on payment of redemption fine and personal penalty and allowed for re-export by taking a lenient view.

7. On perusal of records, Government notes that the applicant has indulged in an ingenious method of concealment of the gold smuggled into the country in different forms totally weighing 1022.070 gms valued at Rs. 30,91,732/- (Rupees Thirty Lakhs Ninety One Thousand Seven Hundred Thirty Two Only). One part of the impugned goods was attempted to be smuggled in the form of the buckle of his leather belt. The other part of the impugned goods was attempted to be smuggled in the form of two gold rods neatly wrapped with black plastic polythene paper in a hair styling crimper set. Needless to say, these modes of carrying gold are not normal modes in which a passenger carries personal effects. Moreover, nothing was declared by the

applicant in his Customs Declaration Form against the column "Total value of dutiable goods imported(Rs.)" thereby indicating that he was not carrying any dutiable goods. It is further observed that on examination of the gold for its genuineness, purity, the belt buckle as well as the two rods were certified to be 24 carat gold.

8. The Government observes that the applicant main premise in their revision application is that the goods have not been brought by them for trade or business. In this regard, the state in which the gold was brought in by the applicant is a good pointer to his intentions. The gold has been brought in pure gold form by concealing in the form a silver coloured metal belt buckle and as two metallic rods of gold concealed in a brush sleeves inside a hair-styling crimper. The gold in both these instances was 24 carat gold. The arguments of the applicant could have perhaps been considered if the gold was brought in the form of jewellery. The fact that the gold has been brought in pure form leaves no doubt of its purpose of import. It would go without saying that 24 carat gold in the form of belt buckle and rods cannot be for bonafide personal use.

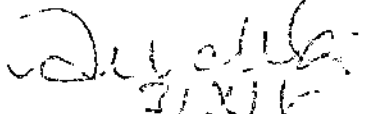
9. Government notes that the other main argument of the applicant is that absolute confiscation was not called for and that re-export of the goods be allowed. The facts of the case reveal that the applicant had not declared the gold being carried by him. These goods did not constitute bona fide baggage in terms of section 79 of the Customs Act, 1962. The confiscation of the impugned gold and imposition of personal penalty on the applicant cannot be assailed because the case against him stands established.

10. Government does not find any merits in applicant's submissions for redemption of impugned absolutely confiscated gold as all the case laws cited by the applicant are of other facts/circumstances and none of the case is similar in facts of such meticulous concealment indulged in by the applicant. The personal penalty imposed on the applicant is also apposite and does not require interference. As regards, applicant's request for allowing re-export of goods, it is noted that applicant has not sought re-export of goods on his arrival, under Section 80 of Customs Act, 1962. He has deliberately attempted

to import the said goods illegally and therefore his request for re-export cannot be accepted at this stage.

11. In the result, the Government does not find justifiable reason to interfere with the order of the lower appellate authority. The Order-in-Appeal is upheld. The revision application is dismissed.

12. So ordered.


(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. ~~128~~⁹²⁸/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 31-10-2018

To,
Shri Puthen Purayil Sheminadh
S/o Shri Aniyaraputath Vazhayil Abotty
Shamnad Manzil,
Paral P.O.,
Kuthuparambam,
Kannur 670 643

Copy to:

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