

REGISTERED SPEED POST



GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No. 373/136/B/16-RA / 9260

Date of Issue 03.12.2018

ORDER NO. 962/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 12.11.2018  
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 Mohammed Noufal

Respondent : Commissioner of Customs, Mangalore Airport

Subject : Revision Application filed under Section 129DD of the Customs  
Act, 1962 against the Order-in-Appeal No. 316/2016 dated  
31.03.2016 passed by the Commissioner of  
Customs(Appeals), Bangalore



**ORDER**

This revision application has been filed by Shri Mohammed Noufal(hereinafter referred to as the "Applicant") against the Order in Appeal No. 316/2016 dated 31.03.2016 passed by the Commissioner of Customs(Appeals), Bangalore.

2. Briefly stated, the facts of the case are that on 25.01.2014, Officers of Customs at Mangalore International Airport intercepted the applicant who was found to be carrying six pieces of gold bars of 24 carat purity. These six gold bars had been ingeniously concealed in three plastic containers purportedly containing food products weighing 699.840 gms valued at Rs. 21,13,516/-(Rupees Twenty One Lakhs Thirteen Thousand Five Hundred Sixteen Only). The Customs Officers seized the gold in the reasonable belief that the same was being smuggled into India without declaration and without payment of customs duty. A show cause notice was issued to the applicant and adjudicated by the Joint Commissioner of Customs, Mangalore vide Order-in-Original No. 87/2014-JC dated 22.12.2014 whereby the seized gold bars concealed in three plastic containers had been ordered for absolute confiscation under the provisions of Section 111(i) of the Customs Act, 1962 and penalty of Rs. 2,20,000/- was imposed under Section 112(a) and penalty of Rs. 1,00,000/- was imposed under Section 114AA of the Customs Act, 1962.

3. Aggrieved by the order of the adjudicating authority, the applicant preferred appeal before the Commissioner(Appeals). The applicant filed the appeal on the grounds that the impugned goods had been brought for bonafide use and hence were not liable for confiscation; that the goods were neither concealed nor mis-declared and hence confiscation and imposition of penalty was not correct; that gold biscuits are classified under ITC HS Classification Code No. 7108 1300 and fall under freely importable goods and do not fall within the category of "prohibited goods"; that the adjudicating authority should have given an option to



the owner of the goods to pay fine in lieu of confiscation. The applicant placed reliance upon the judgment of Hon'ble High Court of Andhra Pradesh in the case of Sheikh Jamal Basha vs. GOI[1997(91)ELT 277(AP)] and the decision of the Hon'ble Tribunal in the case of Yakub Ibrahim Yusuf vs. Commissioner of Customs, Mumbai[2011(263)ELT 685(Tri-Mum)].

4. After carefully going through the records, the Commissioner(Appeals) found that the passenger-applicant had concealed six gold bars in three plastic containers supposedly containing food products weighing 699.840 gms valued at Rs. 21,13,516/- of 24 carat gold. He found that the modus adopted was novel and an ingenious method of concealing the gold for clearance through customs so as to pass it off as bonafide baggage. The fact of concealment had come to light only after thorough examination. After questioning and scanning the baggage the ingenious method of smuggling gold in plastic containers supposedly containing food products came to light. The Commissioner(Appeals) therefore averred that the six gold bars could not be considered as bonafide baggage. He placed reliance upon certain judgments to hold that "smuggled goods" are "prohibited goods". In so far as the applicants pleas for release of the goods on payment of redemption fine are concerned, he observed that the adjudicating authority had held that the goods are liable to absolute confiscation. The Commissioner(Appeals) in such manner vide Order-in-Appeal No. 316/2016 dated 31.03.2016 concurred with the findings of the adjudicating authority, upheld the order of the adjudicating authority and rejected the appeal filed by the applicant.

5. Being aggrieved by the order of the Commissioner(Appeals), the applicant has now filed a Revision Application on the following grounds:

- (i) That the applicant has not imported any items for trade or business and that the goods are for bonafide use of the applicant and therefore not liable for confiscation.
- (ii) That the applicant had not concealed any dutiable or prohibited items which attract the provisions of Section 111(i) of the Customs Act.



*[Handwritten signature]*



- (iii) That the applicant had not made any misdeclaration or concealed the goods to warrant confiscation and penalty.
- (iv) That the adjudicating authority and the appellate authority had failed to appreciate that gold biscuits are classified under ITC HS classification code no. 7108 1300 and falls under the category of freely importable goods; that there is no other law prohibiting the import of gold. Therefore, since the gold is not prohibited goods to order for confiscation/re-export, the adjudicating authority is required to give the owner of the goods to pay fine in lieu of confiscation. The issue regarding absolute confiscation of the goods had been considered by the various High Courts.
- (v) That the applicant had not imported any prohibited goods to impose heavy amount as penalty.
- (vi) That the adjudicating authority as well the appellate authority had failed to appreciate the fact that it is the bonafide duty of the proper officers in the interest of natural justice, to enlighten the affected persons about the alternative remedies available to them whereas the officers have not even allowed the benefit of re-export.

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 Government observes that the applicant had concealed six gold bars in three containers, supposedly containing food products. On interrogating the applicant, it was revealed that one of his friends; viz. Shri



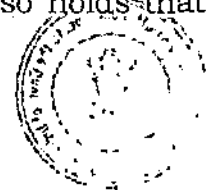
Nasar had advised him that if he invested around Rs. 10 lakhs and took gold to India in a concealed manner without declaring to customs, he could earn a good profit. The applicant had then given Dhs 58000 to Shri Nasar and Shri Nasar had in turn packed the gold in concealed manner alongwith personal effects in a carton box and told him that the Customs Officers would not be able to detect the gold bars.

8. From the facts revealed during the investigation, it is obvious that the black coloured powder found in the three containers marked "GREENWOOD HEALTHCARE-BORIC ACID POWDER", "SAFA-GLUCOSED-D-Mango Flavour" and "FOSTER CLARK'S CUSTARD POWDER" was meant to be a ruse to conceal the gold bars and avoid detection while the applicant tried to clear customs. The method in which the applicant has attempted to clear the gold bars through customs is definitely a case of ingenious concealment. The black powder was introduced into the containers to avoid detection of the gold bars while scanning the baggage. Moreover, Government observes that the quantum of gold 699.840 gms and its value is substantial.

9. Government finds that the applicant has admittedly failed to declare the gold bars at the time of clearing customs. Hence, the goods are confiscatable under the provisions of Section 111 of the Customs Act, 1962. However, there is a catena of judgments which upholds the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. The orders of the lower authorities upholding absolute confiscation are therefore required to be set aside. No evidence has been brought on record by the investigation indicating that the applicant was a habitual offender. The search carried out at his residence also did not reveal anything to suggest he was involved in smuggling prior to this incident. Therefore, Government is inclined to accede to the request for re-export of the goods on payment of appropriate redemption fine. The applicant has also rendered themselves liable to be penalized for not declaring the impugned goods. The Government also holds that penalty



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has rightly been imposed under Section 112 of the Customs Act, 1962 and no penalty is imposable under Section 114AA of the Customs Act, 1962 in baggage cases.

10. In view of the above, Government sets aside the Order-in-Appeal and allows the confiscated six gold bars totally weighing 699.840 gms recovered from the applicant valued at Rs. 21,13,516/- (Rupees Twenty One Lakhs Thirteen Thousand Five Hundred Sixteen only) to be allowed for re-export on payment of redemption fine of Rs. 10,00,000/- (Rupees Ten Lakhs Only) under Section 125 of the Customs Act, 1962. Government also holds that the facts of the case do not justify reduction in the penalties imposed hence the same are upheld and the penalty imposed under Section 114AA of the Customs Act, 1962 is set aside.

11. Revision application is allowed in the above terms and Order-in-Appeal is modified to that extent.

12. So, ordered.

  
12.11.18

(ASHOK KUMAR MEHTA)

Principal Commissioner & Ex-Officio

Additional Secretary to Government of India

ORDER No. 962/2018-CUS (SZ) /ASRA/MUMBAI

DATED 12.11.2018

To,  
Shri Mohammed Noufal  
S/o Shri Hassainar  
R/o Sinan Manzil,  
Naimarmoola,  
Muttathody,  
P.O. Kasargod - 671 123

**ATTESTED**

  
3.12.18  
एस. आर. हिरुलकर  
S. R. HIRULKAR



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
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