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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. 380/08/B/16-RA/2252

Date of Issue 03.12.2018

ORDER NO. 971 /2018-CUS (SZ) / ASRA / MUMBAI DATED 28.11.2018 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 : The Commissioner of Customs, Chennai.

Respondent : Shri Syed Khader Basha.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C.Cus.-I-No.603/15 dated 30.09.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

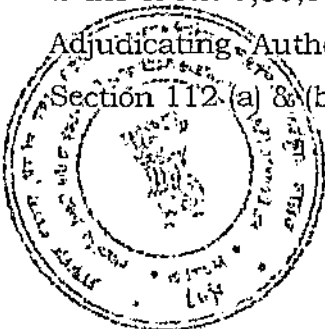


ORDER

This revision application has been filed by Commissioner of Customs, Chennai (herein referred to as Applicant) against the Order in Appeal No. C.Cus.-I-No.603/15 dated 30.09.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Based on suspicion, the passenger, Shri Syed Khader Basha (herein referred to as "the respondent") was intercepted by the Customs Officers at Anna International Airport, Chennai on his arrival by the Gulf Air Flight No. GF-68 from Bahrain on 21.11.2014. The respondent was questioned whether he is carrying gold / contraband in his baggage, to which he replied negative. The respondent had filled up the value of the dutiable goods brought by him as Rs. 5,000/- in his Customs Declaration Form. During the personal search of the respondent, the Customs Officers recovered three gold bars which were wrapped with black colour polythene paper and concealed in his undergarment. The three gold bars were found embossed as 'SUISSE 10 TOLAS FINE GOLD 999.9' on each. These all three gold bars were totally weighing 349.50 gms and was appraised at Rs. 8,27,015/- (Rupees Eight Lakh Twenty Seven Thousand Fifteen Only). The Customs officers seized the impugned gold bars under the reasonable belief that the same were smuggled into India and hence liable to confiscation under the provisions of the Customs Act.

3. After due process of the law vide Order-In-Original No. 1417/2014-(AIU)AIR dated 23.04.2015 the Original Adjudicating Authority ordered confiscation of three gold bars totally weighing 349.50 gms valued at Rs. 8,27,015/- under Section 111 (d) and (l) of the Customs Act, 1962 and an option was given to the respondent to redeem the gold on payment of a fine of Rs. 3,50,000/- under Section 125 of the Customs Act, 1962. The Adjudicating Authority also imposed penalty of Rs. 75,000/- under Section 112 (a) & (b) on the Respondent.



4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals-I), Chennai challenging the decision of the Adjudicating Authority in allowing an option to the respondent to redeem seven gold bars totally weighing 349.500 gms valued at Rs. 8,27,015/-. The Appellate Authority vide Order-In-Appeal No. C.Cus.-I-No.603/15 dated 30.09.2015 had rejected the department's appeal and upheld the order of Adjudicating Authority

5. Aggrieved with the above order the applicant has filed this revision application on the following grounds.

- 5.1 The respondent had attempted to smuggle gold by way of concealment in his undergarment.
- 5.2 The respondent had a culpable mind to smuggle the gold into India without payment of duty.
- 5.3 The respondent did not declare about possession of gold to the Custom Authorities.
- 5.4 The respondent was not an eligible passenger to import the gold.

6. The Department requested to set aside the impugned order in appeal.

7. A personal hearing in the case was held on 27.08.2018, 17.09.2018 & 26.09.2018. However, no representative from the applicant's side appear on any of the occasion so offered.

8. The Government has gone through the case records and it is seen that the respondent arrived at the Anna International Airport, Chennai on 21.11.2014 and was intercepted by the Customs Officers. The personal search of the respondent resulted in the recovery of three gold bars which were concealed in undergarment worn by him. The impugned three gold bars were totally weighing 349.500 gms valued at Rs. 8,27,015/- .

9. The Original Adjudicating Authority ordered confiscation of three gold bars weighing 349.500 gms of gold valued at Rs. 8,27,015/- under Section 111 (d), (l) & (m) of the Customs Act,1962 with an option to redeem

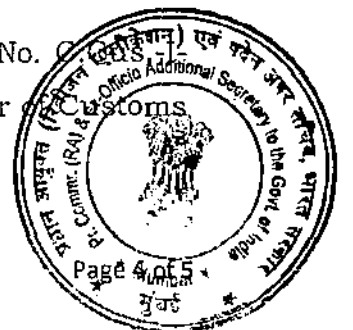


the gold on payment of a fine of Rs. 3,50,000/- under Section 125 of the Customs Act, 1962. The Adjudicating Authority also imposed penalty of Rs. 75,000/- under Section 112 (a). The Appellate Authority upheld the order of the adjudicating authority.

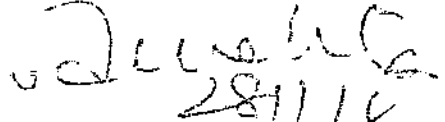
10. The Government has gone through the case records. It is observed that three gold bars were concealed in undergarments by the respondent. The concealment was planned so as to avoid detection and evade Customs duty and smuggle the gold into India. This is not a simple case of mis-declaration. In this 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 was well aware that he was required to declare the gold to the authorities and if he was not intercepted before the exit, the Applicant would have taken out the gold without payment of customs duty.

11. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold and imposed a penalty. However, the option to redeem impugned gold on payment of fine in the instant case where the respondent had concealed the gold with intention to smuggle them into India without payment of appropriate duty would make smuggling an attractive proposition and work against the deterrence. In the instant case the respondent had kept the gold on his person in undergarments and it cannot be called ingenious concealment. Therefore, the government is inclined to uphold the orders of Commissioner (Appeals) and original adjudicating authority to redeem the impugned gold on payment of fine allowed to the respondent and penalty has also been upheld. The Government holds that the quantum of fine & penalty are sufficient.

9. Government therefore upholds the Order in Appeal No. C-1/603/15 dated 30.09.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.



10. Accordingly, the Revision Application is dismissed.
11. So, ordered.


28/11/18

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

ORDER No. 971/2018-CUS (SZ) /ASRA/Mumbai DATED 28.11.2018

To,

1. The Principal Commissioner of Customs,
Chennai-I Commissionerate,
New Customs House, Meenambakkam,
Chennai- 600027.
2. Shri Syed Khader Basha,
58/23, Gandhi Bazar, Opp. Navarang Footwear,
Raychotty, Y.S.R. District,
Andhra Pradesh- 516 269.

Copy to:

1. The Commissioner of Customs (Appeals-I), Chennai, 60, Rajaji
Salai, Customs House, Chennai - 600 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.

ATTESTED


3/12/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

