

**SPEED POST**

F. No. 373/282/B/SZ/2018-RA  
F. No. 380/95/B/SZ/2018-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 28/02/23.

Order No. 73-74/23-Cus dated 28-02-2023 of the Government of India passed by Shri Sandeep Prakash, Additional Secretary to the Government of India under Section 129DD of the Custom Act, 1962.

- Subject : Revision Applications, filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. TVM-EXCUS-000-APP-539-2018 dated 17.07.2018, passed by the Commissioner of Customs (Appeals), Central Tax, Central Excise & Custom, Cochin.
- Applicant : 1. Sh. Abdul Basheer Abdul Nazerali, Trichy, Tamil Nadu  
2. Commissioner of Customs (Preventive), Cochin.
- Respondent : 1. Commissioner of Customs (Preventive), Cochin.  
2. Sh. Abdul Basheer Abdul Nazerali, Trichy, Tamil Nadu

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**ORDER**

Two Revision Applications, bearing Nos. 373/282/B/SZ/2018-RA dated 22.10.2018 & 380/95/B/SZ/2018-RA dated 08.11.2018, have been filed by Sh. Abdul Basheer Abdul Nazerali, Trichy, Tamil Nadu (*hereinafter referred to as the Applicant*) and by the Commissioner of Customs (Preventive), Cochin (*hereinafter referred to as the department*), respectively, against the Order-in-Appeal No. TVM-EXCUS-000-APP-539-2018 dated 17.07.2018, passed by the Commissioner of Central Tax, Central Excise & Customs (Appeals), Kochi. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, modified the Order-in-Original No. 03/2016-17-CUS(JC) dated 27.07.2016, passed by the Joint Commissioner of Central Excise, Customs & Service Tax, Thiruvananthapuram to the extent of allowing redemption of confiscated goods against the payment of Customs duty on merits and redemption fine of Rs. 5,60,460/- under Section 125 of the Customs Act, 1962 and set aside the penalty imposed on the Applicant, under Section 114AA of the Customs Act, 1962. The penalty imposed under Section 112 (a) of the Act *ibid* has also been reduced from Rs. 5,60,000/- to Rs. 2,80,000/-.

2.1 Brief facts of the case are that officers of DRI received a specific information that one international passenger would be carrying gold concealed in his person/ baggage and attempt to smuggle the same into India by handing it over to another passenger who would board the Air India flight no. AI-968 dated 31.01.2016, from Thiruvananthapuram, as domestic passenger and would be traveling to Chennai. Pursuant thereto, the officers of DRI boarded the flight, upon its landing at the Thiruvananthapuram airport, along with two independent witnesses and identified an onboard passenger, namely, Sh. Abdul Basheer Abdul Nazerali (the Applicant herein) travelling in Seat No. 17A. On initial enquiries regarding possession of gold or any valuable items, the Applicant denied the same. The Applicant was thereafter offloaded, purportedly with his consent, along with his hand baggage by the officers of DRI. Immigration formalities were completed and the Applicant was taken to the Customs office for further investigations in the presence of independent witnesses. From the travel documents like Passport, it was found that he was a frequent flier. On repeated query whether Applicant was carrying gold either on his person or in his baggage, he replied in negative. As informed by the Applicant, he had nothing to declare other than what he had already declared in his Customs Declaration Slip. On perusal of Customs Declaration Slip, it was found that the value of the dutiable goods in his possession was kept as 'NIL'. During examination of his person, in the presence of independent witnesses, 06 gold biscuits, wrapped in paper, 24 carat purity, totally weighing 699.7 gms, valued at Rs. 18,68,199/-, as certified by the approved assayer, were recovered from the pocket of the coat worn by him. In absence of any legal documents evidencing licit possession of recovered gold biscuits, the same were seized under Mahazar dated 31.01.2016. The Applicant in his statements dated 23.01.2015 &

21.04.2016, recorded under Section 108 of the Customs Act, 1962, inter-alia, stated that he was the sole proprietor of a firm in Sharjah and engaged in business of importing rice and vegetables at Sharjah from India; that he suffered heavy loss and one of his friends suggested that smuggling of gold into India is profitable; that smuggling of gold could be done in such flights which run as domestic flights after arrival in India from abroad; that he went to Sharjah on 27.01.2016 and arranged money from his friends to buy gold; that he bought gold on 30.01.2016 and kept the same in pocket of his coat for handing it to a domestic passenger; that when the flight landed at Thiruvananthapuram, the officers of DRI entered into the flight and subsequently recovered the gold from him; that he did not know the name and any other details of the domestic passenger who was supposed to board the flight from Thiruvananthapuram and collect the gold from him; that on being asked, he informed that he opted costlier route from Sharjah to Chennai via Thiruvananthapuram as exchange of gold to domestic passenger could be done in Air India flights when it operated in domestic sector on reaching India from abroad; that he had not filed any Income Tax Return as he had not any taxable income and paid any tax. Consequent upon booking of offence under Section 132 and 135 of the Customs Act, 1962, the house of the Applicant/ Respondent was searched on 13.04.2016 but no contraband/ incriminating documents were recovered.

2.2 The original authority, vide the Order-in-Original dated 27.07.2016, confiscated absolutely the seized gold biscuits. Penalties of Rs. 5,60,000/- and Rs. 3,70,000/- were also imposed on the Applicant under Section 112(a) & 114AA of the Customs Act, 1962, respectively. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), who, vide the impugned Order-in-Appeal, allowed the redemption of the seized gold under Section 125 against payment of Customs duty on merits and redemption fine of Rs. 5,60,460/-. The penalty imposed on the Applicant under Section 112 (a) has been reduced to Rs. 2,80,000/-, whereas, penalty imposed under Section 114AA of the Act, ibid has been set aside.

3.1 The Applicant has filed revision application, mainly, on the grounds that he was forcefully deplaned at Thiruvananthapuram airport though he was to disembark only at Chennai airport, taken to the DRI office at Thiruvananthapuram where gold biscuits were seized; that there was no domestic passenger waiting in Thiruvananthapuram airport to board and receive the gold biscuits inside the aircraft and no one was apprehended by the DRI, also; that the gold biscuits were purchased at Sharjah against purchase invoice and brought into India as revenue proceeds of his import business in the form of gold biscuits; that statement was recorded under duress and coercion upon his sudden deplaning from the flight by the officers of DRI; that no opportunity was granted to him to make a declaration under Section 77; that neither had he crossed the green channel nor the recovered gold biscuits were concealed ingeniously; that there was no import or attempt to import the gold biscuits illegally against the provisions of Customs Act, 1962; that a

case of seizure of gold biscuits was foisted on him for no fault of his; that the LAA's findings that the Applicant/ Respondent knowingly wrapped the gold biscuits individually in paper in his coat pocket for easiness of handing over the same to the (imaginary), domestic passenger as planned; that the observations that the Applicant had an intent to not declare import of goods under Section 77 before the proper officer of customs is patently wrong as there was no chance or time given to him to make a declaration under Section 77, *ibid*; that the observations of Commissioner (Appeals) (para 6 of OIA, refers) are not true that the Applicant/ Respondent did not opt for the red channel and walked through the green channel and that he did not declare the gold brought by him to Customs as required under Section 77 of the Customs Act, 1962 and that he was intercepted by the DRI officers at exit point; that the passport of the Applicant was seized on board itself by the officers of DRI; that the inward immigration stamps were placed by the immigration authorities on passport of the Applicant on being tendered by the officers of DRI and not by him, himself. Request for re-export of the confiscated gold made on payment of redemption fine has been made on the ground that the Applicant could not redeem the gold biscuits on payment of duty on merits.

3.2 The department has filed revision application, mainly, on the grounds that the Applicant was bound to Chennai from Sharjah via Thiruvananthapuram and when the flight landed at Thiruvananthapuram airport, he was intercepted by the officers of DRI, as the intelligence suggested that the gold carried by the Applicant could be handed over to a domestic passenger in the course of domestic journey of the flight; that on denying of possession of gold, the Applicant was offloaded and examined; that the interception was conducted within the Customs area as defined under Section 2(11) of the Customs Act, 1962; that Section 100 empowers the Customs officers to conduct search on any person who had entered India or in an Customs Area; that the gold was secreted and the Applicant was not an eligible passenger to import gold as he had not stayed abroad 6 months; that gold was brought with the sole intention of smuggling without payment of duty and thus becomes prohibited goods as stipulated under Section 2(33) of the Act, *ibid*; that such goods are liable for confiscation under Section 111; that the Order of the Commissioner (Appeals) may be set aside.

4. Personal hearing in the matter was fixed on 09.02.2023, which was attended by Sh. A. Selvaraj, Consultant, for the Applicant (physically) and by Ms. Latha R. AC for the department (virtually). Sh. A. Selvaraj, Consultant reiterated the contents of the RA as well as the additional submissions filed on 06.02.2023. He requested that the goods may be allowed to be redeemed for re-export and penalty imposed under Section 112 may be reduced. Sh. Selvaraj supported the order of Commissioner (Appeals) to the extent of dropping of penalty under Section 114AA. Ms. Latha, AC appeared for the Applicant department and reiterated the contents of the departmental RA.

5.1 The Government has examined the matter carefully. The Applicant has contended that he may be allowed to re-export the gold and the penalty under Section 112 may be reduced. On the other hand, the department has sought for restoring the Order-in-Original i.e., absolute confiscation of gold seized from the Applicant as well as restoration of the penalty imposed under Section 114 AA.

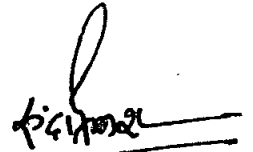
5.2 It is not disputed that the Applicant herein was enroute to Chennai on an Air India Flight from Sharjah when he was de-boarded at Thiruvananthapuram airport by the officers of DRI on the specific information that he was carrying gold and would smuggle the same by handing it over to a domestic passenger on Thiruvananthapuram - Chennai leg of the flight. The DRI has not identified the domestic passenger who was to carry gold for the Applicant to Chennai. Though it is contended that the Applicant was voluntarily de-boarded at Thiruvananthapuram, such a contention does not inspire much confidence for the reason that the Applicant was booked up to Chennai and no normal person would volunteer to be deboarded at an enroute station by investigating agency, especially, when he is carrying contraband. The contention of the Applicant volunteering to deboard becomes even more suspect as it is simultaneously claimed by the investigating agency that the Applicant was throughout denying carrying any gold on him and even crossed the green channel at the Thiruvananthapuram airport. The gold was not ingeniously concealed and was found in coat pocket. In such a situation, the Applicant could have not entertained a belief that the agency would not be able to find the gold on him. Therefore, in normal course, the Applicant would either refuse being deboarded or would deboard and disclose the carriage of gold. In other words, it is doubtful that a person would keep denying carrying contraband, specially when contraband was not ingeniously concealed, but simultaneously volunteer to be de-boarded, knowing fully well that upon de-boarding the contraband would be found and seized.

5.3 Another important aspect which needs consideration is the claim of investigating agency that Applicant had already filled his Customs Declaration Slip when he was de-boarded at Thiruvananthapuram even though he was destined for Chennai and had made a 'Nil' declaration therein. Even if this was presumed to be true, the Applicant had a right to change his mind till he crossed the green channel at the Chennai airport and to make a true declaration. Therefore, by de-boarding the Applicant at Thiruvananthapuram, the investigating agency has preempted the Applicant from making a declaration at his port of disembarkation, as per his choice. It is also noted that the investigating agency has not identified the domestic passenger to whom the Applicant was supposed to handover the gold and who was to then accompany him on the domestic leg of the flight. In such a situation, it would, perhaps, have been advisable for the investigating agency to act on the specific information at the Chennai Airport when they could have intercepted the Applicant as well the carrier domestic passenger, if any.

5.4 At the same time, it is also to be noted that in terms of Section 123 of the Customs Act, 1962, the onus of proving that the gold is not smuggled is on the Applicant. It has also been brought out that the Applicant is not an eligible passenger and was not carrying sufficient foreign currency to pay the duty. Therefore, the liability to confiscation of the gold seized from the Applicant cannot be doubted. However, keeping in view the position discussed in preceding para 5.3, it is apparent that the claim of mis-declaration by the Applicant is premature. In these peculiar facts and circumstances of the case, the contention of the Applicant for being allowed to re-export the gold seized from him merits consideration.

5.5 In view of the above, the Government allows redemption of the seized gold under Section 125 of the Customs Act, 1962 for the purposes of re-export on payment of a fine of Rs. 5,60,460/-. The impugned Order-in-Appeal is modified to this extent. As the claim of mis-declaration is premature/suspect, the Government does not find it to be a fit case for imposition of penalty under Section 114 AA and, therefore, upholds the order of Commissioner (Appeals), whereby such penalty has been dropped. The penalty imposed on the Applicant, under Section 112(a), has been reduced to Rs. 2,80,000/- by the Commissioner (Appeals), which is just and fair and no further relief is merited.

6. Accordingly, the Revision Application No. 373/282/B/SZ/2018-RA filed by the Applicant is allowed partly to the extent indicated above. The Revision Application No. 380/95/B/SZ/2018-RA filed by the department is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

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Order No. 73-74/23-Cus dated 28-02-2023

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3. PPS to AS(RA)
4. Guard File
- ✓ 5. Spare Copy
6. Notice Board.

ATTESTED



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