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GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No. 373/37/B/16-RA

2356

Date of Issue 13/12/2018

ORDER NO. ¹⁰⁴⁰ /2018-CUS (SZ) / ASRA / MUMBAI/ DATED 30.11.2018 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 Abdul Nasser Kolavayal

Respondent : Commissioner of Customs (Airport) Cochin.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. COC-CUSTOM-OOO-APP-333/2015-16 dated 31.12.2015 passed by the Commissioner of Customs (Appeals), Cochin.



ORDER

This revision application has been filed by Shri Abdul Nasser Kolavayal (herein referred to as Applicant) against the Order in Appeal No. COC-CUSTOM-000-APP-333/2015-16 dated 31.12.2015 passed by the Commissioner of Customs (Appeals), Cochin.

2. On 13.06.2013 the Applicant arrived at the Cochin Airport, he was intercepted as he was walking through the exit. Examination of his baggage and person resulted in the recovery of 2 gold bars on one kilogram each totally valued at Rs. 52,18,830/- (Rupees Fifty Two lakhs Eighteen thousand Eight hundred and Thirty). The gold was recovered from specially made pockets on the inside of his trousers.

3. After due process of the law vide Order-In-Original No. 06/2014 dated 02.05.2014 the Original Adjudicating Authority ordered absolute confiscation of the gold and cigarettes under Section 111 (d) (i) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 10,00,000/- on the Applicant under Section 112 (a) of the Customs Act, 1962 on the Applicant.

4. Aggrieved by the said order, the Applicant, filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. COC-CUSTOM-000-APP-333/2015-16 dated 31.12.2015 rejected the appeal of the Applicant.

5. Aggrieved with the above order the Applicant, has filed this revision application interalia on the grounds that;

5.1 The order of the appellate authority is oppose to law, facts and circumstances of the case; The adjudication authority ought not to have confiscated the gold bars and the Commissioner of Customs (Appeals) has acted in a harsh and tyrannical manner against the settled principles of law; The absolute confiscation of the gold has resulted in a serious miscarriage of justice and is contrary to law and against the natural principles of justice; The import of gold is permitted and gold is not prohibited; In liberalized regime the adjudication authority should have released the gold on redemption fine and penalty; absolute confiscation



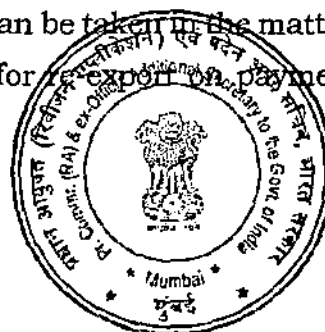
is unwarranted and as per section 125 of the Customs Act is very clear on release of the gold on redemption fine and penalty; The Hon'ble Supreme Court has held in various cases that the enactment of the Customs Act, 1962 is to generate revenue and not for punishment; The allegations made by the adjudication authority are based on assumptions and presumptions; The investigations made at the residence of the Applicant confirmed that the gold belonged to the Applicant.

5.2 The Applicant submitted case laws in favor of his case and prayed for setting aside the absolute confiscation of the gold and release the gold on reasonable redemption fine and penalty in the interest of justice.

6. A personal hearing in the case was scheduled in the case, the Advocate for the Applicant Shri K.P.A. Shukoor, Advocate for the Revision Applicant attended the hearing, he re-iterated the submissions filed in Revision Application and pleaded that the order in Appeal be set aside and a lenient view in the matter may be taken and the gold be released on redemption fine and penalty.

7. However, the facts of the case reveal that the gold was recovered from specially stitched pockets on the inside of his trousers the though concealed cannot be termed as ingeniously concealed. Import of gold is restricted not prohibited. The Applicant has no past history of such misdemeanors. The original adjudicating order notes that among the documents recovered from his possession, was a cash bill of UAE dirhams towards purchase of 2 nos of Kilo bar therefore the ownership of the gold is not disputed. Thus, mere non-submission of the declaration cannot be held against the Applicant and dispossess him of the gold.

8. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. In view of the above facts, the Government is of the opinion that absolute confiscation of the gold is harsh and unjustified and therefore, a lenient view can be taken in the matter. The Applicant has pleaded for redemption of the gold for re-export on payment of redemption



fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal is therefore liable to be set aside.

9. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 2 gold bars of one kilogram each weighing 2000 grams totally valued at Rs. 52,18,830/- (Rupees Fifty Two lakhs Eighteen thousand Eight hundred and Thirty) is allowed to be redeemed for re-export on payment of redemption fine of Rs. 25,00,000/- (Rupees Twenty five lakhs) under section 125 of the Customs Act, 1962. Government observes that the facts of the case justify reduction in the penalty imposed. The penalty of Rs. 10,00,000/- (Rupees Ten lakhs) is reduced to Rs. 8,00,000/- (Rupees Eight lakhs) under section 112(a) of the Customs Act,1962.

10. Revision application is allowed on above terms.

11. So, ordered.

Ashok Kumar Mehta
30.11.18

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

ORDER No. ¹⁰⁴⁰ /2018-CUS (SZ) /ASRA/MUMBAI

DATED 30.11.2018

To,

Shri Abdul Nasser Kolavayal
c/o K. P. A. Shukoor, Advocate
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Copy to:

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

