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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. 373/356/B/14-RA / 1411

Date of Issue 23/03/2018

ORDER NO. 105/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 15.03.2018 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. Faisal Bari

Respondent : Commissioner of Customs(Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus No. 1734/2014 dated 25.09.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri. Faisal Bari against the order no C.Cus No. 1734/2014 dated 25.09.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, an Indian National had arrived at the Chennai International Airport on 12.04.2014, he was intercepted at the red channel by the Customs Officers while paying duty for dutiable goods including Samsung 32" LED TV brought by him valued at Rs. 20,000/- in his declaration card. Examination of his baggage resulted in recovery of two gold rods weighing 351 gms valued at 10,42,821/-, these gold rods were ingeniously concealed inside two steel ratchet spanner. The Original Adjudicating Authority, vide his order 505/2014 - AIU dated 18.06.2014 absolutely confiscated the gold rods referred to above. A Penalty of Rs. 1,25,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant. The Samsung 32" LED TV was released on payment of applicable duty.

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals) Chennai, vide his Order in Appeal C.Cus No. 1734/2014 dated 25.09.2014 rejected the Appeal.

4. The applicant has filed this Revision Application inter alia on the following grounds that;

4.1. The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case.

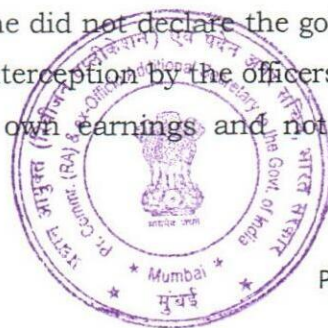
4.2 The gold is not a prohibited item and as per liberalized policy gold can be released on payment of redemption fine and penalty.

4.3 The Hon'ble Supreme Court has in recent judgments stated that the object of the Customs Authority is to collect the duty and not to punish the person who violated the Customs Act.

4.4 The Applicant was not aware that it was an offence to bring gold without proper documents that the gold belongs to him.

4.4 The only allegation against him is that he did not declare the gold. Since the gold was kept in his baggage at the time of interception by the officers.

4.5 He had purchased the gold from his own earnings and not for any commercial reasons.



4.6 The Applicant did not admittedly pass through the green channel. He was at the red channel all along.

4.7 There is no provision in the Customs Act which made it mandatory to confiscate absolutely. Section 125 it is open for the Authority to give an option for redemption against payment of fine.

4.8 The respondent has passed an order stating that as the Applicant is a carrier, the gold cannot be redeemed on payment of redemption fine. Whereas under section 125 of the Customs Act, even when confiscation is authorized, gives it to the owner and where such owner is not known to the person from whose possession or custody such goods have been seized.

The Revision Applicant cited various assorted judgments in support of re-export even when the gold was concealed and prayed for permission to re-export the gold on payment of nominal redemption fine and reduced personal penalty.

5. A personal hearing in the case was held on 07.03.2018, the Advocate for the respondent Shri Palanikumar re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed. Nobody from the department attended the personal hearing.

6. The Government has gone through the case records it is seen that the gold rods were concealed in steel ratchet spanner and kept in his baggage. There is absolutely no doubt that the concealment was very intelligently and elaborately planned so as to evade Customs duty and to smuggle gold into India. The aspect of allowing the gold for re-export can be considered when imports have been made in a legal manner. In this case the Applicant has blatantly tried to smuggle the gold into India in contravention of the provisions of the Customs, 1962. Government also notes that the gold bars were not declared by the Applicant, and the value of the dutiable goods carried by him was declared was Rs. 20,000/- in the Customs declaration card as required under Section 77 of the Customs Act, 1962. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and that the Applicant had no intention of declaring the gold to the authorities and if he was not intercepted before the exit, the Applicant would have taken out the gold bars without payment of customs duty. In his voluntary statement recorded after his interception the Applicant revealed that the gold was given to him at the Singapore Airport, and he was offered a monetary consideration to carry and hand it over to some other person in India, it thus raises doubts on the ownership of the gold. The above acts have therefore rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962.

Therefore, the government holds that the original adjudicating authority has rightly confiscated the gold absolutely and imposed a penalty of Rs. 1,25,000/-. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.

7. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C. Cus. No. 1734/2014 dated 25.09.2014 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

8. Revision Application is dismissed.

9. So, ordered.

(ASHOK KUMAR MEHTA)

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

ORDER No. 105/2018-CUS (SZ) /ASRA/MUMBAI DATED 15.03.2018

To,

Shri Faisal Bari
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai 600 001.

True Copy Attested

SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. The Commissioner of Customs (Appeals), Custom House, Rajaji Salai Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

