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SPEED POST

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
8<sup>th</sup> Floor, World Trade Centre, Centre – I, Cuffe Parade,  
Mumbai-400 005

F.No. 373/347/B/14-RA

1454

Date of Issue 03/04/2018

ORDER NO. 115/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 20.03.2018 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 Arunachalam

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. 1445/2014 dated 08.08.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Arunachalam (herein after referred to as the Applicant) against the order no C. Cus No. 1445/2014 dated 08.08.2014 passed by the Commissioner of Customs (Appeals), Chennai.

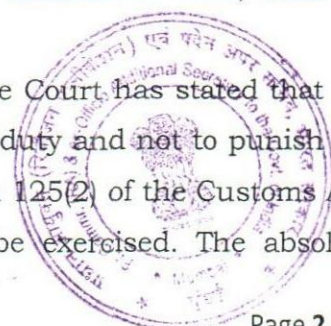
2. Briefly stated the facts of the case are that the applicant, an Indian national arrived at the Chennai Airport on 21.01.2014. He was intercepted while proceeding towards the Green Channel. Examination of his hand baggage resulted in the recovery of 3 gold bars totally weighing 300 gms totally valued at Rs. 7,59,462/- (Seven lac Fifty Nine thousand Four hundred and Sixty two ). After due process of the law vide Order-In-Original No. 68/2014 dated 24.05.2013, Original Adjudicating Authority absolutely confiscated the gold bars referred to above under section 111(d) and 111(l) of the Customs Act, 1962 read with section 3(3) of the Foreign trade (D &R) Act, 1992. A Penalty of Rs. 90,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant.

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. 1445/2014 dated 08.08.2014 rejected the appeal of the applicant.

4. The applicant has filed this Revision Application interalia on the grounds that;

4.1 The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; Gold is not a prohibited item and according to the liberalized policy gold can be released on payment of redemption fine and penalty; the Applicant was not aware that it was an offence to bring gold without proper documents; the only allegation against him is that he did not declare the gold; he was all along under the control of the Customs officers at the red channel and had not crossed the green channel; the seized gold belongs to him and was purchased through his own earnings; CBEC circular 9/2001 gives specific directions stating that a declaration should not be left blank, if not filled in the Officer should help the passenger to fill in the declaration card, such an exercise was not conducted by the officers;

4.2 It was also pleaded that The Hon'ble Supreme Court has stated that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions; under section 125(2) of the Customs Act, 1962 option of redemption is mandatory and has been exercised. The absolute





confiscation of the gold is therefore harsh and unjustified, and the worn gold jewelry should have been allowed for re-export without redemption fine and penalty. But the officers proceeded to detain the jewelry because it was not declared; the gold was not concealed in an ingenious manner..

4.2 The Revision Applicant cited various assorted judgments and boards policies in support of his case and prayed for reduction of 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 attended the hearing he 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 facts of the case. The Applicant was questioned by the officers but he chose not to declare the gold. Neither was there a written declaration of the gold jewelry as required under Section 77 of the Customs Act, 1962 and had he not been intercepted he would have gone without paying the requisite duty, under the circumstances confiscation of the gold is justified.

7. However, the facts of the case state that the Applicant was intercepted before he exited the Green Channel. Government observes that the gold was kept in his baggage and there was no ingenious concealment of the goods. The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record the oral declaration on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The Applicant has pleaded for re-export on Redemption fine and penalty and Government is inclined to accept the plea.

8. Government allows redemption of the confiscated gold bars for re-export in lieu of fine. The gold bars totally weighing 300 gms valued at Rs. 7,59,462/- (Seven lac Fifty Nine thousand Four hundred and Sixty two ) is ordered to be redeemed for re-export on payment of redemption fine of Rs.3,00,000/- (Rupees Three lacs) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify slight reduction in the penalty imposed. The penalty imposed on the Applicant is therefore

reduced from Rs. 90,000/- (Rupees Ninety thousand ) to Rs 75,000/- ( Rupees Seventy Five thousand ) under section 112(a) of the Customs Act,1962.

9. The impugned Order in Appeal stands modified to that extent. Revision application is partly allowed on above terms.

10. So, ordered.

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

ORDER No. 115/2018-CUS (SZ) /ASRA/Mumbai, DATED 20.03.2018

To,

Shri Arunachalam  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High court, 2<sup>nd</sup> 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, Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

