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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No. 373/302/B/14-RA 1451 Date of Issue 03|04|2018

ORDER NO.118/2018-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. Hibrahim Ali Mohamed Badusha

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. 1266/2014 dated 24.07.2014 passed by the Commissioner of Customs (Appeals) Chennai.

ORDER

This revision application has been filed by Shri. Hibrahim Ali Mohamed Badusha against the order no C.Cus No. 1266/2014 dated 24.07.2014 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 11.12.2013. On persistent interrogation the Applicat revealed that he had 6 (six) gold bars concealed in his rectum. The Applicant voluntarily ejected 6 gold bars totally weighing 600 gms valued at 17,92,900/-. After due process of the law the Original Adjudicating Authority, vide his order 1445/2013 dated 22.02.2013 absolutely confiscated the gold bars referred to above under section 111(d) and 111(l) of the Customs Act, 1962. A Penalty of Rs. 1,80,000/- 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. 1266/2014 dated 24.07.2014 rejected the Appeal.

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 has also been pleaded that the Hon'ble Supreme Court has in the case of Om Prakash vs Union of India 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; there is no provision in the Customs Act to confiscate absolutely;

Hon'ble Supreme Court and High Court have in several judgments have stated that it is mandatory to give option under section 125 of the Customs Act, 1962 even when confiscation is authorized.

4.3 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 Applicant had concealed the gold bars in his rectum. In his statement he has admitted that the gold was ingeniously concealed with the intention to hoodwink the customs authorities. Government also notes that the gold bars were not declared by the Applicant. Filing of true and correct declaration under the Customs Act, 1962 is an absolute and strict obligation of any passenger as he was not an eligible passenger to import gold.

7. In his voluntary statement recorded after his interception the Applicant also revealed that he was offered a monetary consideration to conceal and carry the gold and hand it over to some other person in India. There is no doubt about the fact that the Applicant has contravened the provisions of Customs Act, 1962. Therefore, the seized gold bars are liable for absolute confiscation under provisions of the Customs Act, 1962 as the applicant had deliberately concealed the seized gold in the rectum to avoid detection and to dodge the Customs Officer and smuggle out the same without payment and payment of appropriate duty. This 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 view of the above mentioned observations the Government is inclined to agree with the Order in Appeal and holds that the impugned gold has been rightly confiscated absolutely. Hence the Revision Application is liable to be rejected.

8. *Taking into consideration the foregoing discussion,* Government upholds the Order in Appeal No. 1266/2014 dated 24.07.2014

9. Revision Application is dismissed.

10. So, ordered.

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

ORDER No.118/2018-CUS (SZ) /ASRA/Mumbai DATED 20.03.2018

To,

Shri Hibrahim Ali Mohamed Badusha
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, Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.