

373/76/B/14-RA
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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. 373/76/B/14-RA/१

Date of Issue 05.04.2018

ORDER NO. 148/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 28.03.2018 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. Hussain Shahul Hameed

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. 199/2014 dated 11.02.2014 passed by the Commissioner of Customs(Appeals) Chennai.



ORDER

This revision application has been filed by Shri. Hussain Shahul Hameed (herein after referred to as the Applicant) against the order in Appeal C. Cus No. 199/2014 dated 11.02.2014 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 International Airport Chennai 21.07.2012. The Applicant was intercepted by the officers of Air Intelligence Unit while he was trying to cross the Green channel and examination of his baggage resulted in recovery of assorted goods in commercial quantity totally valued at Rs. 6,00,000/- (Six lacs). As the goods were in commercial quantity the Original Adjudicating Authority, vide his order 604/2013 dated 25.07.2013 absolutely confiscated all the goods under Section 111 (d) and (m) of the Customs Act,1962. A Penalty of Rs. 60,000/- was also imposed under Section 112 (a) of the Customs Act, 1962 on the Applicant. Aggrieved by this order the Applicant filed an appeal against the order in original. The Commissioner of Customs (Appeals) Chennai, vide his C. Cus No. 199/2014 dated 11.02.2014 rejected the Appeal of the Applicant.

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

3.1 The order of the appellate authority is against law, weight of evidence and circumstances and probabilities of the case; As the value of the goods will be reduced day by day and will become outdated, it is requested that the goods be released; The option to redeem the goods is mandatory and the authority should have exercised the discretion under section 125 of the Customs Act, 1962 and allowed to redeem the goods on payment of fine and penalty; There is no mandatory provision for absolute confiscation; the Hon'ble Supreme Court has in the case of Om Prakash vs Union of India states that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions;

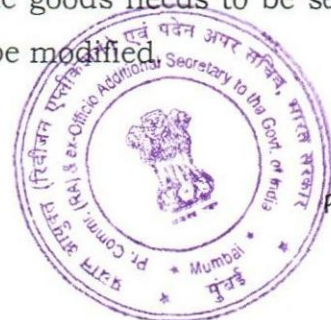


3.2 The Revision Applicant cited various assorted judgments and boards policies in support of re-export of the goods and in support of his case and prayed for permission to re-export the goods on payment of nominal redemption fine and reduced personal penalty and thus render justice.

4. 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.

5. The Government has gone through the facts of the case. The Applicant, has been involved in two similar cases earlier. The fact that the goods were in commercial quantity is not disputed. When the officers enquired whether he was carrying any dutiable goods the Applicant stated in the negative. A written declaration of gold was not made by the Applicant 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 goods is justified.

6. However, Government observes that there is no allegation that the goods were ingeniously concealed. The only reason for confiscation of the goods is that the goods were brought in commercial quantity. Government is in agreement the goods get outdated, and decrease in value with time and should have been released on payment of suitable redemption fine and penalty. 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. The absolute confiscation of the goods therefore appears harsh and unjustified. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The order of absolute confiscation of the goods needs to be set aside and the impugned Order in Appeal therefore needs to be modified.



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8. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated goods valued at Rs. 6,00,000/- (Rupees Six lacs) for re-export in lieu of fine. The confiscated goods are ordered to be redeemed for re-export on payment of redemption fine of Rs.2,50,000/- (Rupees Two lacs Fifty thousand) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 60,000/- (Rupees Sixty Thousand) to Rs. 50,000/- (Rupees Fifty 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.

(Handwritten Signature)
28/03/18

(ASHOK KUMAR MEHTA)

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

ORDER No. 148/2018-CUS (SZ)/ASRA/MUMBAI

DATED 28-03-2018

To,

True Copy Attested

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

(Handwritten Signature)
3/4/18
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.

