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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. 373/74/B/14-RA / 62

Date of Issue 10.04.2018

ORDER NO. 149/2018-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 Ravichandran

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. 260-263/2014 dated 13.02.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Ravichandran against the order no C.Cus No. 260-263/2014 dated 13.02.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, had arrived at the Chennai Airport on 15.07.2013. He was intercepted at the green channel without making a declaration by the officers of Directorate of Revenue Intelligence, examination of his baggage and person resulted in recovery gold jewelry, totally weighing 201 gms valued at Rs. 4,87,636/- (Rupees Four Lacs Eighty seven thousand Six hundred and thirty six). As the Applicant had not declared the impugned gold the original Adjudicating Authority vide his order in original 822/2013 Batch C dated 15.07.2013 absolutely confiscated the gold bars under section 111 (d), (l), (m) and (o) of the Customs Act, 1962. A Penalty of Rs. 50,000/- 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. 260-263/2014 dated 13.02.2014 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; Simply because the Applicant did not declare the gold the department cannot become the owner of the gold and hence option section 125 of the Customs Act, 1962 has to be exercised; There are no specific allegations that the Applicant had crossed the green channel; The Applicant was wearing the gold chain at the time of interception and was voluntarily shown to the officers, the gold chains were not concealed and this can be ascertained from the CCTV record; he was all along under the control of the officers at the red channel and did not pass through the green channel; Having shown the gold to the officers and as it was clearly visible the question of declaration does not arise; Sections 111 (d), (l), (m) and (o) of the Customs Act, 1962 are not attracted in the case and have been applied mechanically;

4.2 The Applicant further pleaded that the 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; that

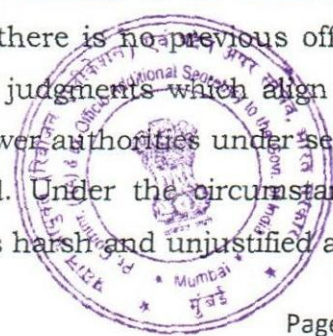
bonafide baggage has not been defined under the Customs Act, 1962 nor in the rules made thereunder; The section 125 of the Customs Act, 1962 clearly mandates that the option to redeem the goods in lieu of confiscation is mandatory and this discretion should be exercised by the Adjudicating Authority; 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;

4.3 The Revision Applicant cited various assorted judgments and boards policies in support of his case and prayed that the Hon'ble Revisionary Authority allow re-export of the gold or release the gold on payment of redemption fine and personal penalty and thus render justice.

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 re-export was allowed under nominal redemption fine and personal penalty. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. The facts of the case state that the Applicant was intercepted at the scan area while trying to exit the Green Channel. 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 gold is justified.

7. However, Government also observes that the ownership of the gold is not disputed. The gold was worn by the Applicant and there was no ingenious concealment of the gold. 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 to 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. It is noted that there is no previous offence registered against the Applicant. 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. Under the circumstances, Government is of the opinion that absolute confiscation is harsh and unjustified and a



lenient view can be taken in the matter. The Applicant has pleaded for re-export of the gold jewelry and the Government is inclined to accept the plea. The order of absolute confiscation of the gold jewelry in the impugned Order in Appeal therefore needs to be modified and the confiscated gold is liable to be allowed for re-export on payment of redemption fine and penalty.

8. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold lump for re-export in lieu of fine. The gold bars totally weighing totally weighing 201 gms valued at Rs. 4,87,636/- (Rupees Four Lacs Eighty seven thousand Six hundred and thirty six) is ordered to be redeemed for re-export on payment of redemption fine of Rs.2,00,000/-(Rupees Two lacs.) 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. 50,000/- (Rupees Fifty thousand) to Rs. 40,000/- (Rupees Forty 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.

(Signature)
28/03/18

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

ORDER No. 149/2018-CUS (SZ) /ASRA/MUMBAI

DATED 28.03.2018

To,

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

True Copy Attested

(Signature)
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.

