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GOVERNMENT OF INDIA
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F.No. 373/181/B/14-RA | 59

Date of Issue 10.04.2018

ORDER NO. 152/2018-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 P. Seeni Sahul 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. 444/2014 dated 12.03.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

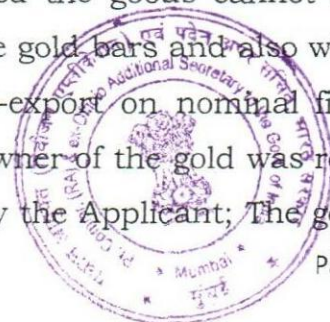
This revision application has been filed by Shri P. Seeni Sahul Hameed against the order no C.Cus No. 444/2014 dated 12.03.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, had arrived at the Chennai Airport on 21.07.2011. 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 of 9 gold bars wrapped in insulation tape, totally weighing 762.2 gms valued at Rs. 17,62,588/- (Rupees Seventeen Lacs Sixty two thousand Five hundred and Eighty eight). The Applicant was arrested and subsequently released on bail. As the Applicant had not declared the impugned gold the original Adjudicating Authority vide his order in original 31/2012 JC AIR dated 21.12.2012 absolutely confiscated the gold bars under section 111 (d), (l) and (m) of the Customs Act, 1962. A Penalty of Rs. 2,00,000/- 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. 444/2014 dated 12.03.2014 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; The Customs Act does not make any distinction between the owner of the goods or the person carrying it; Goods must be prohibited before import or export, simply because the goods were not declared the goods cannot become prohibited; The Applicant is the owner of the gold bars and also willing to pay appropriate duty or if permitted to re-export on nominal fine and penalty, the statements that he is not the owner of the gold was recorded by the officers by force and was retracted by the Applicant; The gold was

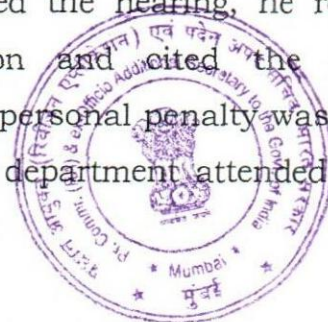


not concealed but kept in baggage but a case was registered as if an attempt was made to smuggle it by concealment.; The Honble Supreme Court has said in recent judgments that the main objective of the Customs authority is to collect duty and not punish; there is no provision for absolute confiscation and option is available under section 125 of the Customs Act,1962;

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 order of the Apex Court in the Case of Hargovind Dash vs Commissioner of Customs reported in 1992 (61) ELT 172 (SC) is very clear in this regard; even assuming without admitting that the gold is prohibited, it can still be released on redemption fine; He is not a frequent traveller and has no record of any previous offence and is not an die hard smuggler; 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.

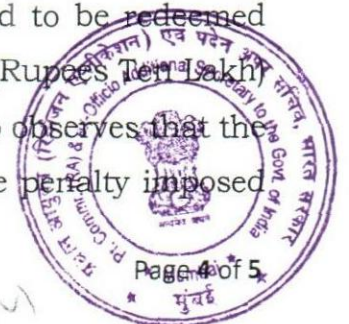
5. A personal hearing in the case was held on 07.03.2018, the Advocate for the respondent Shri Palanikumar attended the hearing, he re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where redemption fine and personal penalty was reduced and requested for the same. 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. The gold bars were wrapped in insulation tape and kept in the baggage to avoid detection. 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 bars were wrapped in insulation tape and kept in the baggage, however 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 a lenient view can be taken in the matter. The Applicant has pleaded for re-export of the gold bars and the Government is inclined to accept the plea. The order of absolute confiscation of the gold 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 for re-export in lieu of fine. The gold bars totally weighing 762.2 gms valued at Rs. 17,62,588/- (Rupees Seventeen Lacs Sixty two thousand Five hundred and Eighty eight) is ordered to be redeemed for re-export on payment of redemption fine of Rs.10,00,000/- (Rupees Ten Lakh) 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. 2,00,000/- (Rupees Two lacs) to Rs.1,75,000/- (Rupees One lac 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.

(Handwritten Signature)
28/03/18

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

ORDER No.152/2018-CUS (SZ) /ASRA/MUMBAI DATED 28.03.2018

To,

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

True Copy Attested

(Handwritten Signature)
5/4/18

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.
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