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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. 373/415/B/14-RA / 69

Date of Issue 10.04.2018

ORDER NO. 156 / 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 Prakasam Kannian

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. 27/2014 dated 28.10.2014 passed by the Commissioner of Customs (Appeals) Chennai.



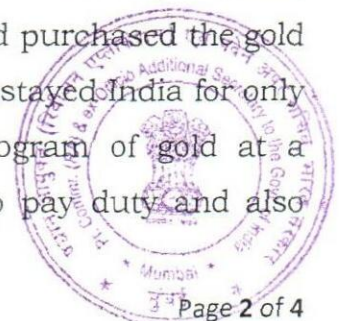
ORDER

This revision application has been filed by Shri Prakasam Kannian (herein after referred to as the Applicant) against the order no C.Cus No. 27/2014 dated 28.10.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Applicant, arrived at the Chennai International Airport on 20.01.2014. In his declaration card he had filled up the value of the goods carried by him as 34,000/-, examination of his baggage and person resulted in recovery of two gold bars, weighing 100 gms each and gold jewelry totally weighing 291 gms totally valued at Rs. 12,42,986/- . As the Applicant had not declared and recovered through interception, the Original Adjudicating Authority vide his order 67/2014 dated 20.06.2014 confiscated the gold bars and jewelry 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 and extended the option to redeem the same on payment of redemption fine of Rs. 3,00,000/- under section 125 of the Customs act 1962. A Penalty of Rs. 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. 27/2014 dated 28.10.2014 rejected the Appeal.

4. The applicant has filed this Revision Application interalia on the following grounds that; the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; that the Applicant was aware that bringing gold without declaring it to the Customs is an offence, but was not aware that bringing gold was an offence; he had purchased the gold out of his own earnings; during the last six months he had stayed India for only 15-18 days and was therefore eligible to bring One kilogram of gold at a concessional rate of duty; he expressed his willingness to pay duty and also



requested for re-export, but was not heard; he was all along at the Red Channel with the officers and did not attempt to pass through the Green Channel;

4.2 It has also been pleaded that as per the circular 394/71/97-CUS (AS) GOI dated 22.06.1999 has stated that arrest and prosecution need not be considered in routine in respect of foreign nationals and NRIs who have inadvertently not declared; even assuming without admitting non-declaration before the officers is only a technical fault; 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; 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; the gold was not concealed in an ingenious manner; there is no previous offence against the Applicant; The redemption fine and penalty is very high and unreasonable.

4.3 The Revision Applicant cited various assorted judgments and boards policies in support of re-export in support of his case 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 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 carefully gone through the facts of the case. The Applicant is a frequent passenger and has stated in his revision application that he was well aware that it was an offence to bring gold without declaring it to the authorities, and yet in his written declaration there was no mention of gold, and the value of goods declared by him was only 34,000/-. The gold bars are of primary gold. When questioned by the Officers on whether he was carrying any gold he replied in the negative. Therefore a proper disclosure 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. Government observes that the Original Adjudicating Authority has rightly exercised the option available under section 125 of the Customs Act, 1962 and has extended the option to redeem the gold on payment of redemption fine and penalty. Further, the Government holds that the redemption fine of Rs. 3,00,000/- (Rupees Three lacs) and the penalty of Rs. 80,000/- imposed is also appropriate. Under the circumstances, the Government holds that Commissioner (Appeals) has rightly upheld the order of the Original Adjudicating Authority.

8. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C. Cus. No. 27/2014 dated 28.10.2014 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

9. Revision Application is dismissed.

10. So, ordered.

(Handwritten Signature)
28/3/18

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

ORDER No. 156/2018-CUS (SZ) /ASRA/MUMBAI DATED 28.03.2018

To,

Shri Prakasam Kannian

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

True Copy Attested

(Handwritten Signature)
15/3/18
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, Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

