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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. 373/420/B/14-RA

118

Date of Issue 19.04.2018

ORDER NO. 183/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 16.04.2018 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 R. Azharudheen

Respondent : Commissioner of Customs(Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MAD-CEX-000-033-14 dated 08.08.2014 passed by the Commissioner of Central Excise (Appeals) Madurai.



ORDER

This revision application has been filed by Shri R. Azharudheen (herein after referred to as the Applicant) against the order no C. Cus No. MAD-CEX-000-033-14 dated 08.08.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 07.11.2012 and was intercepted as he attempted to go through the Green Channel without any baggage declaration at the Red Channel. Examination of his baggage and person resulted in the recovery of a Gold rod concealed in the hollow cavity of axle rod of his strolley suitcase, totally weighing 195.55 gms valued at Rs. 5,91,539/- (Five Lacs Ninety one thousand Five hundred and Thirty nine). After due process of the law vide Order-In-Original No. MAD-Cus-000-JTC-02-2014 dated 11.06.2014 Original Adjudicating Authority absolutely confiscated the gold rods under section 111 (d) (l) (m) and (o) of the Customs Act, 1962 read with section 3(3) Foreign Trade (D & R) Act, 1992. A penalty of Rs. 1,10,000/- was also imposed under Section 112 (a) of the Customs Act,1962.

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Central Excise (Appeals) Madurai, vide his Order in Appeal No. MAD-CEX-000-033-14 dated 08.08.2014 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 liberalized policy can be released on payment of redemption fine and penalty; The Hon'ble Supreme Court has in recent judgements stated that the main object of the Customs Authority is to collect the duty and not to punish the person for violation of the provisions of Customs Act; He was not aware that bringing the gold was an offence; he was all along the red Channel under the control of the officers and did not pass through the green channel; He is the owner of the gold and he has not brought it for a third party;

4.2 The Applicant further pleaded that the Customs Act 1962 does not make any distinction between the owner of the goods and person carrying it; 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; The Hon'ble Supreme Court has in the case of Om Prakash vs

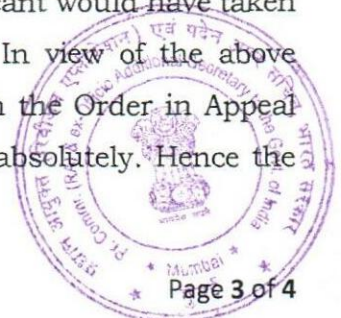
Union of India states that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions; The Apex court in the case of Hargovind Dash vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has pronounced that the quasi judicial authorities should use the discretionary powers in a judicious and not an arbitrary manner; that there is no provision for absolute confiscation of the goods.

4.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing gold for redemption under section 125 of the Customs Act, 1962 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 redemption 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 gold rod were kept concealed in the the hollow cavity of axle rod of his strolley suitcase. Before the search of his baggage he was specifically asked whether he was carrying any gold or contraband to which he specifically replied in the negative. Government notes that the gold was ingeniously concealed with specific intention to avoid detection. Filing of true and correct declaration under the Customs Act, 1962 is an absolute and strict obligation of any passenger.

7. There is no doubt about the fact that the Applicant has contravened the provisions of Customs Act, 1962. Therefore, the seized gold rod is liable for absolute confiscation under provisions of the Customs Act, 1962 as the applicant had deliberately concealed the seized gold to avoid detection and to dodge the Customs authorities and smuggle out the same without payment of appropriate duty. This clearly indicates mensrea, 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 concealed gold bar 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.



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8. Taking into consideration the foregoing discussion, Government upholds the Order in No. MAD-CEX-000-033-14 dated 08.08.2014.
9. Revision Application is dismissed.
10. So, ordered.

(ASHOK KUMAR MEHTA)

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

ORDER No. 83/2018-CUS (SZ) /ASRA/MUMBAI,

DATED 16.04.2018

To,

Shri R. Azharudheen
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 Customs & C. Ex.

Copy to:

1. The Commissioner of Central Excise, Madurai.
2. Commissioner of Central Excise (Appeals) Madurai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

