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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. 373/360/B/14-RA / 116

Date of Issue 19.04.2018

ORDER NO.187/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 17.04.2018 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. T. Moideen Kunhi

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. 1664/2014 dated 08.09.2014 passed by the Commissioner of Customs (Appeals) Chennai.



373/360/B/14-RA

ORDER

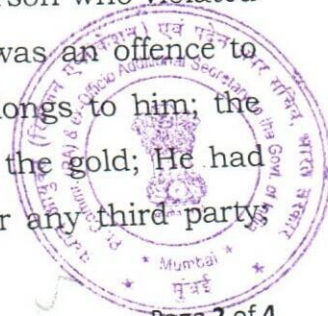
This revision application has been filed by Shri. T. Moideen Kunhi against the order no C. Cus No. 1664/2014 dated 08.09.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, an Indian National, had arrived at the Chennai Airport on 04.03.2014 and was intercepted at the Green channel while he attempted to go through the exit without declaration at the Red channel. Examination of his baggage resulted in recovery of gold in the form of sheets which were carefully concealed in the side walls of the carton. As the gold sheets totally weighing 392 gms valued at 12,08,928/-, were ingeniously concealed the Original Adjudicating Authority, vide his order 242/2014 - AIU dated 22.05.2014 absolutely confiscated the gold sheets referred to above. A Penalty of Rs. 1,25,000/- 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. 1664/2014 dated 08.09.2014 rejected the Appeal.

4. The applicant has filed this Revision Application interalia 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 gold is not a prohibited item and according to the liberalized policy gold can be released on payment of redemption fine and penalty; the Hon'ble Supreme Court has in recent judgements stated that the object of the Customs Authority is to collect the duty and not to punish the person who violated the Customs Act; the Applicant was not aware that it was an offence to bring gold without proper documents that the gold belongs to him; the only allegation against him is that he did not declare the gold; He had purchased the gold from his own earnings and not for any third party.



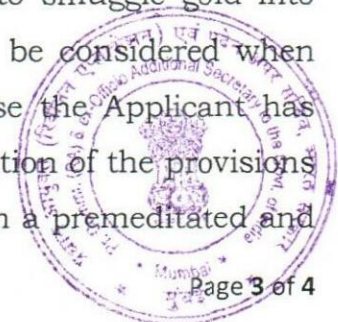
there is no provision in the Customs Act which made it mandatory to confiscate absolutely. Section 125 it is open for the Authority to give an option for redemption against payment of fine.

4.2 It has also been pleaded that 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; section 125 clearly states that goods can be released to the owner of the goods or from the person from whom the goods have been seized;

4.3 The Revision Applicant cited various assorted judgments in support of re-export even when the gold was concealed and prayed for permission to re-export or release 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 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 gone through the case records it is seen that the gold sheets were concealed in the side walls of the carton to avoid detection. There is absolutely no doubt that the concealment was very intelligently and elaborately planned so as to evade Customs duty and to smuggle gold into India. The aspect of allowing the gold for re-export can be considered when imports have been made in a legal manner. In this case the Applicant has blatantly tried to smuggle the gold into India in contravention of the provisions of the Customs, 1962. The said offence was committed in a premeditated and



clever manner and clearly indicates mensrea, and that 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 gold bars without payment of customs duty. The above acts have therefore rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. The government therefore holds that the original adjudicating authority has rightly confiscated the gold absolutely and imposed a penalty of Rs. 1,10,000/-. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.

10. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C. Cus. No. 1664/2014 dated 08.09.2014 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

12. Revision Application is dismissed.

13. So, ordered.

(Handwritten Signature)
17.4.18

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

ORDER No. 187/2018-CUS (SZ) /ASRA/MUMBAI

DATED 17.04.2018

To,

True Copy Attested

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

(Handwritten Signature)
19/4/18
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.

