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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. 373/349/B/14-RA / 15

Date of Issue 19.04.2018

ORDER NO. 188/2018-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 Hammanthu Musthafa

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. 1180/2014 dated 10.07.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

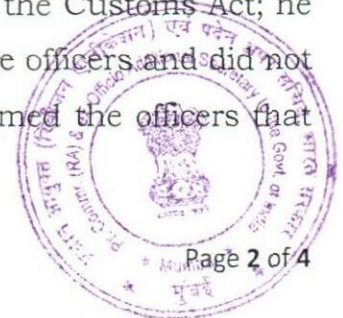
This revision application has been filed by Shri Hammanthu Musthafa (herein after referred to as the Applicant) against the order no C. Cus No. 1180/2014 dated 10.07.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 06.03.2014 and was intercepted as he attempted to go through the Green Channel. Examination of his baggage and person resulted in the recovery of a Gold bar which weighing 100 gms valued at Rs.3,06,800/- (Three Lacs Six thousand Eight hundred) and one Sony 42 inch TV valued at Rs. 30,000/-. The gold bar was concealed in his rectum. After due process of the law vide Order-In-Original No. 263/2014 - AIU A dated 06.03.2014 Original Adjudicating Authority absolutely confiscated the gold jewelry 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. 30,680/- 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 Customs (Appeals) Chennai, vide his Order in Appeal C.Cus No 1180/2014 dated 10.07.2014 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 as per the liberalized policy it can be released on 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; he was all along the red Channel under the control of the officers and did not pass through the green channel; the Applicant informed the officers that



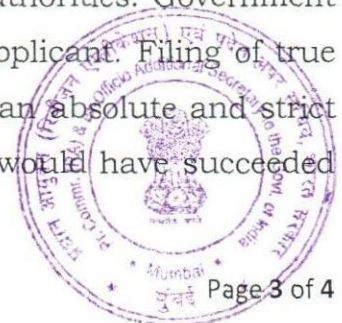
he is the owner of the gold and the same was purchased from his savings for his own use;

4.2 The Applicant further pleaded that 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; 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 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; that the absolute confiscation of the gold and imposition of Rs. 30,680/- penalty is high and unreasonable.

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 Applicant had concealed the gold bar in his rectum. The gold was ingeniously concealed with the intention to hoodwink the customs authorities. Government also notes that the gold bar were not declared by the Applicant. Filing of true and correct declaration under the Customs Act, 1962 is an absolute and strict obligation of any passenger if he was not intercepted he would have succeeded in evading customs duty.



7. There is no doubt about the fact that the Applicant has contravened the provisions of Customs Act, 1962. Therefore, the seized gold bar is liable for absolute confiscation under section 111 (d), (i), (j), (l), and (m) of the Customs Act, 1962 as the applicant had deliberately concealed the seized gold in the rectum to avoid detection and to dodge the Customs Officer and smuggle out the same without payment and payment of appropriate duty. This also 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. 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.

8. Taking into consideration the foregoing discussion, Government upholds the Order in Appeal C. Cus No. 1180/2014 dated 10.07.2014.

9. Revision Application is dismissed.

10. So, ordered.

(ASHOK KUMAR MEHTA)

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

ORDER No. 188/2018-CUS (SZ) /ASRA/MUMBAI

DATED 17.04.18.

To,

Shri Hammanthu Musthafa
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 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.

