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SPEED POST

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No. 373/393/B/14-RA / 1/11

Date of Issue 19.04.2018

ORDER NO. 189/2018-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 Mohammed Yaseen

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. 1865/2014 dated 09.10.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Mohammed Yaseen (herein after referred to as the Applicant) against the Order in Appeal no C. Cus No. 1865/2014 dated 09.10.2014 passed by the Commissioner of Customs (Appeals), Chennai.

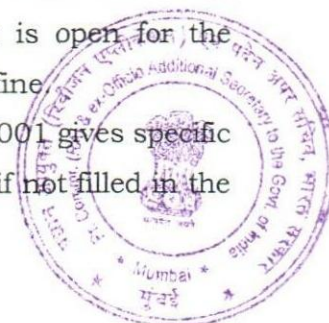
2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 05.04.2014 and was intercepted by the officers of the Air Intelligence Unit on a reasonable suspicion that he might be carrying gold/contraband. Examination of his baggage resulted in the recovery of 23 pieces Gold Bits painted silver totally weighing 323 gms valued at 9,53,496/- ( Rupees Nine Lacs Fifty Three thousand Four hundred and Ninety Six ) alongwith other personal effects. After due process of the law vide Order-In-Original No. 497/2014 - AIU dated 04.06.2014 Original Adjudicating Authority absolutely confiscated the gold bars 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. 90,000/- 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 Customs (Appeals) Chennai, vide his Order in Appeal C.Cus No 1865/2014 dated 09.10.2014 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; 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 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





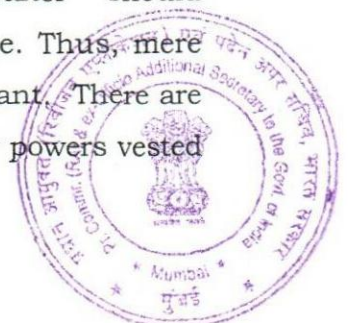
Officer should help the passenger to fill in the declaration card; Gold is not a prohibited item and according to the liberalized policy gold can be released on payment of redemption fine and penalty; The question of eligibility arises if the Applicant wants to clear the gold at concessional rate; The 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; the absolute confiscation of the gold is harsh and unwarranted, gold cannot be prohibited for non-declaration.

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 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 for re-export of gold was allowed. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. It is a fact that the gold jewelry were not declared by the Applicant as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the gold is justified.

7. However, the facts of the case state that the Applicant was intercepted before he attempted to walk towards the Green Channel. The gold is claimed by the Applicant and there is no other claimant. The gold was kept in his baggage and not ingeniously concealed, though gold was covered with silver. There is no allegation of any previous offence registered against the Applicant. 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. 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. The absolute confiscation of the gold is therefore little harsh and unjustified. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The Applicant has requested for re-export and the Government is inclined to accept the plea. The order of absolute confiscation of the gold jewelry in the impugned Order in appeal therefore needs to be modified and the confiscated gold bars is liable to be allowed for re-export on payment of a little higher redemption fine. The penalty imposed could also be reduced slightly.

8. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold jewelry for re-export in lieu of fine. The gold bits weighing 323 gms valued at 9,53,496/- ( Rupees Nine Lacs Fifty Three thousand Four hundred and Ninety Six ) is ordered to be redeemed for re-export on payment of redemption fine of Rs 5,00,000/- (Rupees Five lacs ) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify slight reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs.90,000/- (Rupees Ninety thousand ) to Rs. 75,000/- ( Rupees 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.

(ASHOK KUMAR MEHTA)

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

ORDER No. 189/2018-CUS (SZ) /ASRA/MUMBAI,

DATED 17.04.2018

To,

Shri Mohammed Yaseen  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High court, 2<sup>nd</sup> 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.

