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SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No. 373/413/B/14-RA / 54

Date of Issue 19.04.2018

ORDER NO. 192/2018-CUS (SZ) / ASRA / MUMBAI / DATED 19.04.2018 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 Shabu Mandayippurath Moideen

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. 1181/2014 dated 10.07.2014 passed by the Commissioner of Customs (Appeals) Chennai.

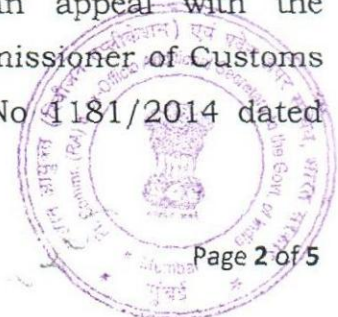


ORDER

This revision application has been filed by Shri Mohammed Shabu Mandayippurath Moideen (herein after referred to as the Applicant) against the order no C. Cus No. 1181/2014 dated 10.07.2014 passed by the Commissioner of Customs (Appeals), Chennai. The applicant has filed the application for condonation of delay of 15 days which has come up for hearing along with the Revision Application. The Revision Applicant has submitted that the he was unwell, due to jaundice and undergoing treatment in Thrissur, Kerala and as such was not in a position to contact his counsel for preparing the Appeal. Government observes that the delay has occurred due to an illness of the Revision Applicant, if the delay is not condoned the Revision Applicant will be put to an irreparable loss. In the interest of justice the Government is therefore inclined to condone the delay. In view of the above the Government condones the delay and proceeds to decide the Revision Application on Merits.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 03/04.08.2013 and was intercepted by the officers of the Air Intelligence Unit at the green channel when he was attempting to pass through the Green channel alongwith the baggage and examination of his person resulted in the recovery of 2 (Two) gold bars of one kilogram each totally weighing 2 kilograms valued at Rs. 55,64,000/- (Fifty Five lacs Sixty Four thousand). The gold bars were recovered from his underwear, He was arrested and subsequently released on bail. After due process of the law vide Order-In-Original No. 184/07.03.2014 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. 5,75,000/- 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 1181/2014 dated 10.07.2014 rejected the Appeal.



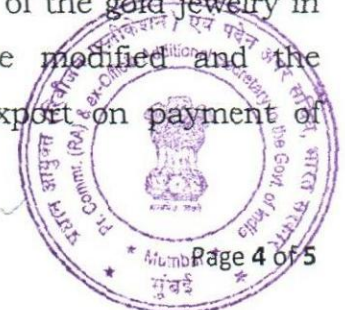
4. The applicant has filed this Revision Application interalia on the grounds that;
- 4.1 the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; he is an eligible passengers for concessional rate of duty having stayed abroad for more than 15 months, but the officers insisted on baggage rate of duty; he was all along the red Channel under the control of the officers and did not pass through the green channel; his personal earnings were 3 (three) lacs and the gold was purchased from his earnings, he also carried foreign currency to pay customs duty; He was intercepted at the scan area when asked he revealed that he was carrying gold biscuits in his pant pockets, the officers however refused to accept an oral declaration.
- 4.2 The Applicant further 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; Goods must be prohibited before import or export simply because non-declaration goods cannot become prohibited after import; assuming without admitting he has not declared the gold it is just a technical fault, as there are no allegations that he has crossed the green channel; that the absolute confiscation of the gold and imposition of Rs. 5,75,000/- penalty is high and unreasonable.
- 4.3 The Applicant has 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 of Rs. 5,75,000/-.

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 chain was not declared by the Applicant. To avail concessional rate of duty the Applicant should have declared the gold as required under Section 77 of the Customs Act, 1962. When asked by the Customs Authorities whether he possessed any gold or contraband he replied in the negative, and under the circumstances confiscation of the gold is justified.

7. However, the facts of the case state that the Applicant was intercepted at the Green Channel and not after he had crossed the Green Channel. The gold is claimed by the Applicant and there is no other claimant. The gold was recovered from his undergarments but not ingeniously concealed by the Applicant. There is no allegation that the Applicant was involved in any similar cases earlier and this appears to be his first indiscretion. The Applicant is an eligible passenger and fulfills all conditions for concessional rate of duty. 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 harsh and unjustified, since the officers had intercepted the passenger at the Green Channel when he had not crossed the Green Channel and passenger had stayed for fifteen months abroad and is real owner of the gold which was recovered. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The order of absolute confiscation of the gold jewelry in the impugned Order in Appeal therefore needs to be modified and the confiscated gold jewelry is liable to be allowed for re-export on payment of redemption fine and penalty.



8. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold bars for re-export in lieu of fine. The gold bars totally weighing 2 kilograms valued at Rs. 55,64,000/- (Fifty Five lacs Sixty Four thousand) is ordered to be redeemed for re-export on payment of redemption fine of Rs.30,00,000/- (Rupees Thirty Lacs) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 5,75,000/- (Rupees Five lacs Seventy Five thousand) to Rs. 5,00,000/- (Rupees Five Lacs) 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.

Handwritten signature
19.4.2018

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

ORDER No.192/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 19.04.2018.

To,

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

True Copy Attested

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, Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.



