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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. 373/320/B/14-RA / 23

Date of Issue 19.04.2018

ORDER NO. 193/2018-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. Mir Zulfiqar Ali

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. 1169/2014 dated 07.07.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

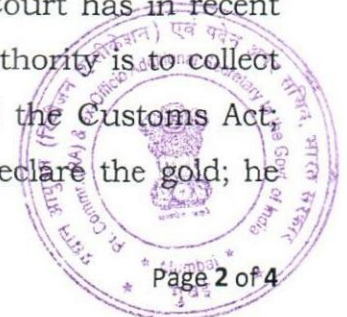
This revision application has been filed by Shri. Mir Zulfiqar Ali against the order no C. Cus No. 1169/2014 dated 07.07.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, had arrived at the Chennai International Airport on 21.08.2013 and was intercepted by the officers of the Air Intelligence Unit while he attempted to go through Green channel exit. Examination of his person resulted in the recovery of 3 (Three) gold bars, ingeniously concealed in two pockets on the inner right and left side of his trouser pants, and from one pocket on the rear inner side of his trouser pockets. The gold totally weighing 2498.5 gms and valued at Rs. 78,32,797/- (Rupees Seventy Eight lacs thirty Two thousand Seven Hundred and ninety seven) was seized by the Customs Authority. After due process of the law the Original Adjudicating Authority, vide his order no. 203 dated 18.03.2014 absolutely confiscated the gold bars referred to above. A Penalty of Rs. 8,00,000/- 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. 1169/2014 dated 07.07.2014 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; 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. The only allegation against him is that he did not declare the gold; he



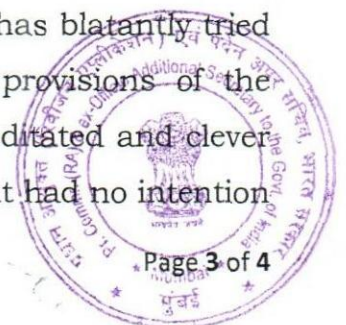
was all along the red Channel under the control of the officers and did not pass through the green channel;

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; that there is no provision for absolute confiscation of the goods and option under section 125 of the Customs Act should be exercised.

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 the gold and reduction of 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. Government has gone through the case records it is observed that the gold bars were ingeniously concealed in three pockets on the inner side of his trouser pants, There is absolutely no doubt that the concealment was intelligently planned and elaborately executed 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. This is not a simple case of mis-declaration. 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 penalty. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.

7. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C. Cus. No. 1169/2014 dated 07.07.2014 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

8. Revision Application is dismissed.

9. So, ordered.

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

ORDER No. 193/2018-CUS (SZ) /ASRA/Mumbai

DATED 19.04.2018

To,

Shri Mir Zulfiqar Ali
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai 600 001.

True Copy Attested

Sankarsan Munda
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.

