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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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F.No. 373/79,80 & 81/B/17-RA / 242

Date of Issue 03/05/2018

ORDER NO. ³²³⁻²²⁵ /2018-CUS (SZ) / ASRA / MUMBAI/ DATED 27.04.2018 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 Mohamed Nizamudeen,
: Shri Mohamed Thariksulaiman
: Shri Kasim Nasser

Respondent : Commissioner of Customs, Visakhapatnam.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. VIZ-CUSTM-000-APP-002 to 004-17-18 dated 26.04.2017 passed by the Commissioner of Customs & Central Excise (Appeals) Visakhapatnam.



ORDER

These three revision applications have been filed by Shri. Mohamed Nizamudeen, Shri. Mohamed Thariksulaiman and Shri. Kasim Nasser (herein after referred to as applicants) against the above Order-In Appeal No. VIZ-CUSTOM-000-APP-002 to 004-17-18 dated 26.04.2017 passed by the Commissioner of Customs & Central Excise (Appeals) Visakhapatnam. Since a common issue is involved in all these Revision Applications and as they are being represented by the same advocate Shri Palanikumar, these Revision Applications are being disposed by a common order.

2. The brief facts of the case are that the Applicants Shri. Mohamed Nizamudeen, Shri. Mohamed Thariksulaiman and Shri. Kasim Nasser who were travelling from Howrah to Chennai by Coromondal Express on 03.02.2016 were intercepted by the officers of DRI at Visakhapatnam railway station. Examination of their trolley bags led to the recovery of 58 pieces of gold totally weighing 9653.150 gms and valued at Rs. 2,65,46,162.50p (Rupees Two crores Sixty five lacs Forty six thousand One hundred and Sixty two paise Fifty). The gold pieces were indigenously concealed in the push handles of their trolley bags. The Applicants were arrested and subsequently released on bail. Investigations revealed that the gold was smuggled into India from Burma and were handed over to the three Applicants for delivery in Chennai. The three Applicants in their respective statements revealed that the gold in question does not belong to them and they do not have the resources to buy such huge quantities of gold.

3. After due process of the law vide Order-In-Original No. 96/2016 dated 01.12.2016 Original Adjudicating Authority absolutely confiscated the 58 gold pieces under section 111 (b) (d) and (i) of the Customs Act,1962. A penalty under Section 112 (a) & (b) of the Customs Act,1962 of Rs. 13,75,000/-, Rs. 6,40,000/- and Rs. Rs. 6,40,000/- was imposed on Shri. Kasim Nasser, Shri. Mohamed Nizamudeen and Shri. Mohamed Thariksulaiman respectively.

4. Aggrieved by this order the Applicants filed an appeals with the Commissioner of Customs & Central Excise (Appeals) Visakhapatnam. The Commissioner of Customs & Central Excise (Appeals) Visakhapatnam vide his Order in Appeal No VIZ-CUSTOM-000-APP-002 to 004-17-18 dated 26.04.2017 rejected the appeal being devoid of merits.



5. The applicants have filed these Revision Application interalia on the grounds that;

5.1 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 the gold can be released on payment of redemption fine and penalty; The findings of section 123 is erroneous as the gold has been seized through the town seizure; 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.

5.2 The Applicants further pleaded that the except the retracted confessional statement no other corroborative evidence to prove that the seized gold is of foreign origin; it is not the case that the gold has been seized from the air of sea port hence the question of a declaration under section 77 of the Customs Act,1962 does not apply, and therefore non-declaration by the passenger is non application of mind; if the goods are absolutely confiscated the options of redemption under section 125 would also be inoperative.

5.3 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 Hon'ble High Court of Andhra Pradesh in the case of Sheikh Jamal Basha vs GOI 1997 (91) ELT 277 (AP) has stated held that under section 125 of the ACT is Mandatory duty to give option to the person found guilty to pay fine in lieu of confiscation;

5.4 The Revision Applicants further cited various assorted judgments and Boards policies in support of their case and pleaded for setting aside the impugned order and release the gold on nominal redemption fine and reduced personal penalty and thus render justice.

6. A personal hearing in the case was held on 19.04.2018, the Advocate for the respondent ~~Shri Palankumar~~ attended the hearing he re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where redemption for of gold was allowed. Nobody from the department attended the personal hearing.



6. The Government has gone through the case records it is observed that that the Applicants have stated that the gold has been smuggled into India from Burma. The have disowned the gold stating that they do not have the wherewithal to purchase such huge quantities of gold in their statements. The fact that they have not produced any evidence for the legal purchase of the gold is evidence enough that the seized gold is of foreign origin and smuggled into India. The facts of the case further suggest that the retraction of their statements and claiming the gold appears to be an afterthought, facilitated by the original mastermind so as to get the gold released. Thus the seized gold does not belong to the Applicants and they have smuggled the gold for someone else for consideration. The efforts made by the DRI officers failed to trace the main persons behind the smuggling of the gold. But there is no doubt of their existence. 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 No. VIZ-CUSTOM-000-APP-002 to 004-17-18 dated 26.04.2017.

9. Revision Application is dismissed.

10. So, ordered.

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

ORDER No. ²²³⁻²²⁵ /2018-CUS (SZ) /ASRA/MUMBAI.

DATED 27.04.2018

To,

Shri Mohamed Nizamudeen,
Shri Mohamed Thariksulaiman
Shri Kasim Nasser
C/o S. Palanikumar, Advocate,
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True Copy Attested

SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

Copy to:

1. The Commissioner of Customs, Visakhapatnam.
2. Commissioner of Customs & Central Excise (Appeals) Visakhapatnam.
3. Sr. P.S. to AS (RA), Mumbai.
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