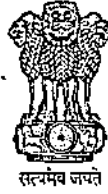


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F.No. 373/58/B/16-RA | 237

Date of Issue 03/05/2018

ORDER NO. 234/2018-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 Mohideen Irfan

Respondent : Commissioner of Customs (Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 120/2016 dated 29.02.2016 passed by the Commissioner of Customs (Appeals-I) Chennai



ORDER

This revision application has been filed by Shri Mohideen Irfan against the Order in Appeal no 120/2016 dated 29.02.2016 passed by the Commissioner of Customs Excise (Appeals-I) Chennai.

2. Briefly stated facts of the case are that the applicant arrived from Dubai on 04.10.2015. He was intercepted and it was noticed that he did not declare any dutiable items in his declaration slip. A personal search resulted in the recovery of 2 nos cylindrical gold bits totally weighing 300 gms valued at Rs. 7,99,800/- (Rupees Seven Lacs Ninety Nine thousand Eight hundred). The two gold bits were concealed in his rectum. After due process of the law the Original Adjudicating Authority, vide his order 423/2015-16 Airport dated 07.01.2016 absolutely confiscated the gold bars referred to above under section 111(d) and 111(l) of the Customs Act, 1962. A Penalty of Rs. 80,000/- 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-I) Chennai. The Commissioner of Customs (Appeals-I) Chennai, vide his Order in Appeal 120/2016 dated 29.02.2016 rejected the Appeal.

4. The applicant has filed this Revision Application inter alia 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 according to the liberalized policy gold can be released on payment of redemption fine and penalty; He was all along the under the control of the customs officers at the Red Channel and did not pass through the Green channel; The adjudication authority has stated that he has not tendered his declaration under section 77 of the Customs Act, 1962 and on the other hand claims that the Applicant is not the owner of the goods, both the claims are not simultaneously tenable.

4.2 It has also been pleaded that Section 125 of the Customs Act, 1962 is very clear that even when confiscated the officer adjudicating may, in the case of any goods give it to the owner or the person from whose possession these goods have been recovered; The Applicant further submitted that The Appellate Court in the



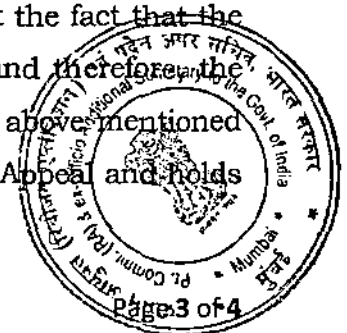
case of Hargovind Dash vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has pronounced that the quasi judicial authorities should use the discretionary powers in a judicious and not an arbitrary manner; The High Court of Andhra Pradesh in the case of Sheik Jamal Basha vs GOI reported in 1997 (91) ELT 277 (AP) held that under section 125 of the Customs Act, 1962 it is mandatory to give option to the person found guilty to pay in lieu of confiscation. Further there are no provision for absolute confiscation of the goods; 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;

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 on payment of nominal redemption fine and reduced personal penalty.

5. A personal hearing in the case was held on 19.04.2018, 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. The Government has gone through the case records it observed that the Applicant had concealed the gold bits in his rectum. It was an attempt made with the intention to hoodwink the customs authorities. Government also notes that the gold bars 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 as he was not an eligible passenger to import gold.

7. 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 of appropriate duty. This ingenious concealment 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 biscuits without payment of customs duty. There is no doubt about the fact that the Applicant has contravened the provisions of Customs Act, 1962 and therefore the seized gold bars are liable for absolute confiscation. In view of the above mentioned observations the Government is inclined to agree with the Order in Appeal and holds



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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. 120/2016 dated 29.02.2016.

9. Revision Application is dismissed.

10. So, ordered.

Ashok Kumar Mehta
27/4/18

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

ORDER No. 234/2018-CUS (SZ) /ASRA/Mumbai

DATED 27.04.2018.

To,

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

True Copy Attested

Sankar San Munda
m/15/18

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

Copy to:

1. Commissioner of Cus (Airport), Chennai.
2. Commissioner of Customs (Appeals-I), Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

