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

F.No. 373/78-A/B/17-RA/227

Date of Issue 03/05/2018.

ORDER NO. 244/2018-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 S. Thangaraj

Respondent : Commissioner of Customs (Airport) Tiruchirapally.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus No. 193/2016 dated 31.10.2016 passed by the Commissioner of Customs (Appeals) Tiruchirapally.



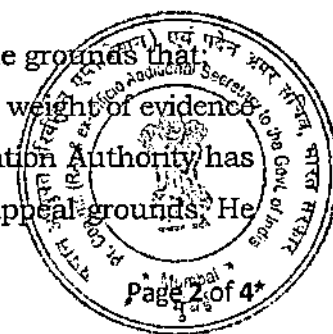
ORDER

This revision application has been filed by S. Thangaraj (herein after referred to as the Applicant) against the order no C. Cus No. 193/2016 dated 31.10.2016 passed by the Commissioner of Customs (Appeals), Tiruchirapally. The applicant has filed the application for condonation of delay of 84 days which has come up for hearing along with the Revision Application. The Applicant has pleaded that he had misplaced the Order in Appeal and as a result there was a delay in handing over the documents to the Advocate and thus there was a delay in filing the Revision Application. The Applicant has pleaded for condonation as the delay has taken place due to a genuine bonafide reason. Government observes that the delay has occurred due to a lapse on the part of the Revision Applicant, however, the delay is within condonable limits and 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 Tiruchirapally Airport on 28.03.2015 and was intercepted as he attempted to go through the Green Channel. The officers noticed that while walking he was dragging his feet, Examination of his feet resulted in the recovery of 2 (two) Gold pieces weighing 130.600 gms valued at Rs. 3,51,444/- ( Three Lacs Fifty one thousand Four hundred and forty four ) stuck with adhesive tape to the sole of both his feet. After due process of the law vide Order-In-Original No. 13/2016 dated 21.01.2016 Original Adjudicating Authority absolutely confiscated the gold pieces under section 111 (d) (i) (l) and (m) 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 (Appeals). The Commissioner of Customs (Appeals) Tiruchirapally, vide his Order in Appeal No 193/2016 dated 31.10.2016 reduced the penalty amount to Rs. 60,000/- and the rest of the Order-In-Original was upheld.

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 Adjudication Authority has simply glossed over the judgments and points raised in the Appeal grounds. He



orally declared the possession of gold but the officers insisted that he had not given a written declaration and proceeded to register a case; he was all along the red Channel under the control of the officers and did not pass through the green channel; the Applicant informed the officers that he is the owner of the gold and the same was purchased from his savings for his own use; Gold is not a prohibited item and as per the liberalized policy it can be brought and duty paid at concessional rate if eligible or at normal baggage rates;

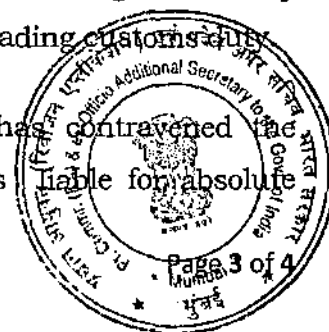
4.2 The Applicant further pleaded that the Hon'ble Supreme Court has in the case of Om Prakash vs Union of India states that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions; The Apex court in the case of Hargovind Dash vs 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 reported in 1997(91)ELT 277 (AP)Sheik Jamal Basha vs GOI held that section 125 of the Act, it is mandatory to give option to the person found guilty to pay in lieu of confiscation.

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.

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 case records it is seen that the Applicant had stuck with adhesive tape to the sole of both his feet. The gold was ingeniously concealed with the intention to hoodwink the customs authorities. Government also notes that the gold 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 if he was not intercepted he would have succeeded in evading customs duty.

7. There is no doubt about the fact that the Applicant has contravened the provisions of Customs Act, 1962. Therefore, the seized gold is liable for absolute



confiscation under section 111 of the Customs Act, 1962 as the applicant had deliberately concealed the seized gold to avoid detection and to dodge the Customs Officer and smuggle out the same without payment of appropriate duty. This also 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. 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 C. Cus No. 193/2016 dated 31.10.2016.

9. Revision Application is dismissed.

10. So, ordered.

*Ashok Kumar Mehta*  
27.4.2018

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

ORDER No. 244/2018-CUS (SZ) /ASRA/MUMBAI

DATED 27.04.2018

To,

Shri S. Thangaraj  
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*  
27/5/18

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

Copy to:

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

