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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. 373/45/B/17-RA/226

Date of Issue 03/05/2018.

ORDER NO. 245/2018-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 Mohammed Rahman

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. 40/2017 dated 07.03.2017 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Mohammed Rahman (herein after referred to as the Applicant) against the order no C. Cus No. 40/2017 dated 07.03.2017 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 28.01.2016 and was intercepted on suspicion. Examination of his baggage and person resulted in the recovery of nine gold bars totally 1048.5 gms valued at Rs. 28,47,726/- (Twenty Eight Lacs Forty seven thousand Seven hundred and Twenty six). These gold bars were ingeniously concealed in the battery of an emergency light.

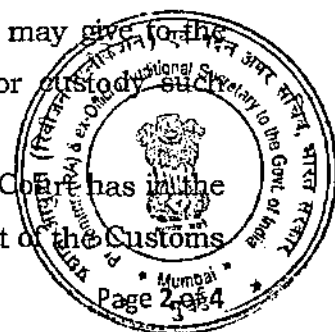
3. After due process of the law vide Order-In-Original No. 158/25.11.2016 Original Adjudicating Authority absolutely confiscated the gold pieces under section 111 (d) (i) (l) and (m) of the Customs Act, 1962 read with section 3(3) Foreign Trade (D & R) Act, 1992. A penalty of Rs. 2,85,000/- was also imposed under Section 112 (a) of the Customs Act,1962. Apenalty of Rs. 10,000/- was also imposed under section 114AA of the Customs Act,1962.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner (Appeals). The Commissioner of Customs (Appeals) Chennai., vide his Order in Appeal No 40/2017 dated 07.03.2017 set aside the penalty of also imposed under section 114AA of the Customs Act,1962 and upheld the rest of the order.

5. The applicant has filed this 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; Gold is a restricted item and not a prohibited item and according to liberalized policy the gold can be released on redemption fine and penalty; The Adjudication Authority has simply glossed over the judgments and points raised in the Appeal grounds; That he has retracted his statement given before the officers; the gold belongs to him and he has brought it for his sisters marriage; Section 125 of the Customs Act,1962 mandates that even when confiscation is authorized the officer may give to the owner of the goods or to the person from whose possession or custody such goods have been seized.

5.2 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



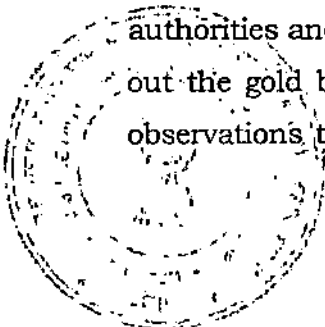
Authority is to collect the duty and not to punish the person for infringement of its provisions; The Apex court in the case of Hargovind Dash vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has pronounced that the quasi judicial authorities should use the discretionary powers 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.

5.3 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 or release 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 were ingeniously concealed in the battery of an emergency light. The gold was ingeniously concealed with the intention to hoodwink the customs authorities. Government also notes that the gold was 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 40/2017 dated 07.03.2017.

9. Revision Application is dismissed.

10. So, ordered.

(Signature)
27.4.18

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

ORDER No 245/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 27.04.2018

To,

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

True Copy Attested

(Signature)
m/15/18

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

Copy to:

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

