



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

F.No. 373/318/B/14-RA/507

Date of Issue 29/05/2018

ORDER NO. 28/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 02.05.2018 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 Waseekan

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. 1170/2014 dated 07.07.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Mohamed Waseekan (herein after referred to as the Applicant) against the order no C. Cus No. 1170/2014 dated 07.07.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case is that the applicant, a Sri Lankan national, had arrived at the Chennai Airport on 22.04.2013. He was intercepted by the officers of the Air Intelligence unit as he was walking through the green channel without declaration. Examination of his baggage and person resulted in the recovery of three loops of gold from a zipper bag, Three different sized gold sheets and one gold rod concealed in his Laptop totally weighing 597.5 grams valued at Rs. 16,10,860/- (Rupees Sixteen lacs Ten thousand Eight hundred and Sixty).

3. The Original Adjudicating Authority vide Order-In-Original No. 202 dated 18.03.2014 ordered for absolute confiscation of the impugned gold under Section 111 (d), and (l) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 1,75,000/- under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus No. 1170/2014 dated 07.07.2014 rejected the appeal of the applicant.

5. The applicant has filed this Revision Application interalia on the following grounds that;

5.1. The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; No Show Cause Notice was served on the Applicant in this case, it is a violation of natural justice; The gold is not a prohibited item and according to the liberalized policy gold can be released on redemption fine and penalty; 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 Applicant further submitted that 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 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



mandatory to give option to the person found guilty to pay in lieu of confiscation; the 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; 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;

5.3 The Revision Applicant cited various assorted judgments in support of re-export even when the gold was concealed and prayed for setting aside the impugned order and permission to re-export the gold on payment of nominal redemption fine and reduced personal penalty.

6. 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.

7. The Government has gone through the case records it is observed that the Applicant was given enough opportunities to declare the gold, he however did not declare the gold pieces at the time. The gold pieces were ingeniously concealed as loops covered with rubber coating attached to the zipper bag and as gold sheets of white colour concealed inside his laptop. There is absolutely no doubt that the concealment was intelligently planned 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 pieces without payment of customs duty.

8. Further, the Applicant being a foreigner is not eligible to import gold. 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 a penalty of Rs. 1,75,000/-. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.

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9. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C. Cus. No. 1170/2014 dated 07.07.2014 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

10. Revision Application is dismissed.

11. So, ordered.

(Handwritten Signature)
2.5.18

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

ORDER No. 28//2018-CUS (SZ) /ASRA/MUMBAI

DATED 02.05.2018

To,

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

Copy to:

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

True Copy Attested

(Handwritten Signature)

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

