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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. 373/202/B/15-RA / 50^{SV}

Date of Issue 29/05/2018

ORDER NO. 285/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 03.05.2018 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 Jairam Partabrai

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. 164/2015 dated 31.03.2015 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Jairam Partabrai (herein after referred to as the Applicant) against the order no C. Cus No. 164/2015 dated 31.03.2015 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case is that the applicant, arrived at the Chennai Airport on 01.08.2014. 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 7 (seven) gold bits totally weighing 701 grams valued at Rs. 19,81,727/- (Rupees Nineteen lacs Eighty one thousand Seven hundred and Twenty seven) concealed in his rectum.

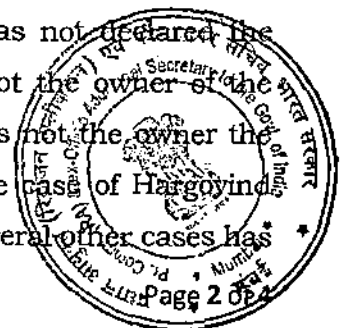
3. The Original Adjudicating Authority vide Order-In-Original No. 923 /2014 - AIU dated 03.09.2014 ordered for absolute confiscation of the impugned gold under Section 111 (d), and (l) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs.2,00,000/- 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. 164/2015 dated 31.03.2015 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; The Appellate Authority has not applied his mind and glossed over the judgments and points raised in the Appeal grounds; Section 125 states that "Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized";

5.2 . The Appellate Authority states that the Applicant has not declared the goods and on the other hand states that the Applicant is not the owner of the goods, Even assuming without admitting that the Applicant is not the owner the question of declaration does not arise; The Apex court in the case of Hargoyind Dash vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has



24

pronounced that the quasi judicial authorities should use the discretionary powers in a judicious and not an arbitrary manner;

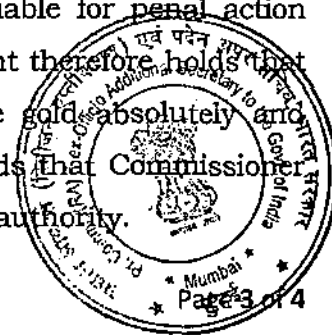
5.3 The Applicant further pleaded that The Hon'ble High Court of Andhra Pradesh in the case of Sheikh Jamal Basha vs GOI 1997 (91) ELT 277 (AP) has stated held that under section 125 of the ACT is Mandatory duty to give option to the person found guilty to pay fine in lieu of confiscation; The Hon'ble 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 absolute confiscation of the gold and imposition of penalty was high and unreasonable.

5.4 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 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.

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 Applicant had concealed gold bits ingeniously in his rectum so as to avoid detection and evade Customs duty and smuggle the 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.

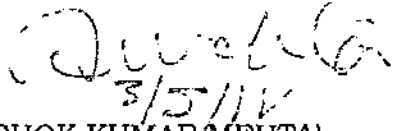
8. The above acts have therefore rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed a penalty of Rs. 2,00,000/-. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.



9. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C. Cus. No. 164/2015 dated 31.03.2015 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

10. Revision Application is dismissed.

10. So, ordered.


 3/5/18
 (ASHOK KUMAR MEHTA)
 Principal Commissioner & ex-officio
 Additional Secretary to Government of India

ORDER No. 285/2018-CUS (SZ) /ASRA/MUMBAI

DATED 03.05.2018

To,

Shri Jairam Partabrai
 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


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

