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SPEED POST

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

F.No. 373/210/B/15-RA | 207

Date of Issue 29/05/2015

ORDER NO. 288/2018-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 Panneerselvam

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. 171/2015 dated 15.04.2015 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Panneerselvam (herein after referred to as the Applicant) against the order no C. Cus No. 171/2015 dated 15.04.2015 passed by the Commissioner of Customs (Appeals), Chennai.

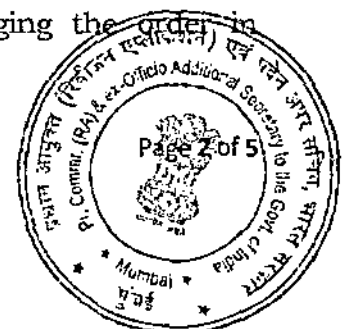
2. Briefly stated facts of the case are that the applicant had arrived at the Chennai Airport on 27.08.2014. He was intercepted as he was walking out through the Green channel and examination of his person resulted in recovery of 4 (Four) gold bars weighing 400 gms valued at Rs. 10,53,924/- (Ten lacs Fifty Three thousand Nine hundred and Twenty Four) wrapped in black adhesive tape and kept in his pant pockets. The gold bars were not declared by the Applicant.

3. The Original Adjudicating Authority vide his order 1061/2014- AIU dated 27.01.2015 confiscated the gold jewelry, but allowed redemption of the gold for re-export on payment of a redemption fine of Rs. 3,75,000/-. A Penalty of Rs. 1,00,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals) Chennai, finding discrepancies in the Original in Original, annulled the order and remanded the case for re-adjudication vide his Order in Appeal C.Cus No. 171/2015 dated 15.04.2015 rejected the Appeal.

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

5.2 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; The seized goods have already been redeemed on payment of redemption fine and penalty and the gold has already been exported and are no longer available; The order in original has been accepted by the Commissioner of Customs and further the Department has not filed any cross appeal challenging the order in



original; The Applicant has not challenged the Confiscation but has only prayed for reduction in Redemption Fine and Penalty;

5.2 The Applicant further pleaded that there is no specific allegation that the Applicant had tried to pass through the Green Channel; the Hon'ble Supreme Court has stated that the main object of the Customs Authority is to collect the duty and not to punish the person; Even assuming without admitting that the Applicant had not declared the Gold the allegation is that he attempted to evade duty amount of Rs. 4,07,076/-, whereas the Redemption Fine and Penalty collected is Rs. 4,75,000/- ie more than the duty amount; CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is blank or incomplete; ; 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;

5.3 The Applicant further pleaded that as The Revision Applicant cited various assorted judgments and boards policies in support of re-export of the gold and prayed for reduction of redemption fine and reduction of personal penalty.

6. A personal hearing in the case was held on 19.04.2018, 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 re-export of gold was allowed on reduced redemption fine and penalty. Nobody from the department attended the personal hearing.

7. The Government observes that the Appellate authority has annulled the Order in Original and remanded the case for re-adjudication. However it is noticed that the impugned gold bars have already been released on payment of Redemption Fine and Penalty, and the same have already been re-exported. The impugned goods are not available with the department. Further the Commissioner of Customs (Air) Chennai has accepted the order. Under the circumstances the Government is of the opinion that it is too late for any amendments in the order. Government also opines that Section 125 clearly mandates 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



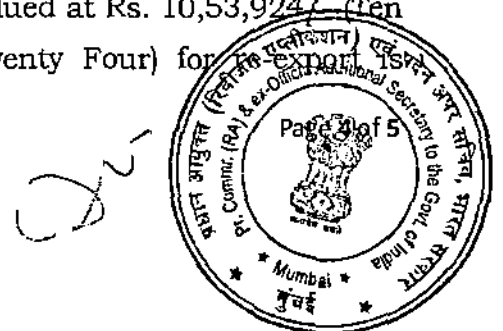
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exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized" and as such the gold has been given to the Applicant, from whose possession the gold was seized; The fact that the Applicant is an Indian National and not a Sri Lankan citizen does not have much bearing on the case. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. The Government therefore finds no reason to differ with the Order-in-Original. The impugned Order in Appeal C. Cus No. 171/2015 dated 15.04.2015 passed by the Commissioner of Customs (Appeals) Chennai therefore is set aside.

8. Further, Government has gone through the facts of the case a written declaration of gold was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and had he not been intercepted he would have gone without paying the requisite duty, under the circumstances confiscation of the goods is justified.

9. However, it is observed that the Applicant was intercepted before crossing the Green Channel. The gold bars were carried by the Applicant in his pant pockets, hence, there was no ingenious concealment of the goods. The ownership of the gold is not disputed. The Applicant does not have any history of previous offences. The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record to the oral declaration on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The impugned Order therefore needs to be modified with reduction in the redemption fine and penalty for re-export.

10. Taking into consideration the foregoing discussion, the redemption fine in lieu of confiscation of the gold weighing 400 gms valued at Rs. 10,53,924/- (Ten lacs Fifty Three thousand Nine hundred and Twenty Four) for re-export



reduced from Rs. 3,75,000/- (Rupees Three Lacs Seventy Five thousand) to Rs. 3,00,000/- (Rupees Three Lakhs) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 1,00,000/- (Rupees One Lac) to Rs. 60,000/- (Rupees Sixty Thousand) under section 112(a) of the Customs Act,1962.

11. The impugned Order in Original stands modified to that extent. Revision application is partly allowed on above terms

12. So, ordered.

Ashok Kumar Mehta
3.5.18

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

ORDER No. ~~28~~ 28/2018-CUS (SZ) /ASRA/MUMBAI DATED 03-05-2018

To,

Shri : Panneeriselvam.

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

True Copy Attested

Sankarsan Munda
29/5/18
SANKARSAN MUNDA
Asstt. Commissioner of Customs & C. Ex.

Copy to:

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

