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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. 373/85/B/14-RA/1809

Date of Issue 29/05/2018

ORDER NO. 290/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 04.05.2018 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 Syed Khajapeer

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. 97/2015 dated 20.03.2015 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Syed Khajapeer (herein after referred to as the Applicant) against the order no C. Cus No. 97/2015 dated 20.03.2015 passed by the Commissioner of Customs (Appeals), Chennai.

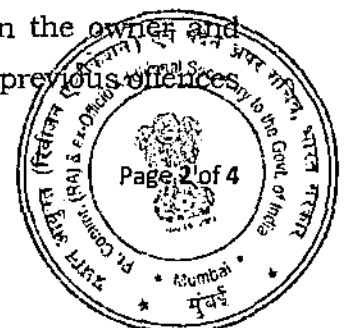
2. Briefly stated the facts of the case is that the applicant, arrived at the Chennai Airport on 21.02.2014. He was intercepted by the officers of the Customs as he was walking through the green channel without declaration. Examination of his baggage resulted in the recovery of 3 (three) gold pieces totally weighing 481.5 gms totally valued at Rs. 14,79,168/- (Rupees Fourteen lacs Seventy Nine thousand One hundred and Sixty Eight). The gold was ingeniously concealed in polythene packets containing dates.

3. The Original Adjudicating Authority vide Order-In-Original No. 191/2014 - AIU dated 03.01.2015 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. 1,25,000/- 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. 97/2015 dated 20.03.2015 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; Ownership of the gold is not a criterion for its eligibility to be imported; Due to pressure from the officers he had to give a statement that the gold belonged to someone else; 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; Section 125 does not make any distinction between the owner and carrier of the goods; He is not a frequent visitor and has no previous offences registered against him.



5.2 The Applicant further submitted that as he had stayed abroad for 2 and a half years, he is eligible to bring gold at concessional rate; Goods must be prohibited before import or export simply because of non-declaration goods cannot be come prohibited; The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled, but it was not such an exercise was not done by the officers; 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 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 did not declare the gold at the time of interception. The gold was ingeniously concealed in two polythene packets containing dates. There is absolutely no doubt that the concealment was planned so as to evade Customs duty and to 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 and properly declared as per Section 77 of the Customs Act, 1962. The elaborate methods taken to hide the gold indicate 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 without payment of customs duty.

8. The above acts have therefore rendered the 481.5 gms of seized gold liable for confiscation under Section 111 of the Customs Act, 1962 and 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. 1,25,000/-



of the above discussion, the Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.

9. The Government therefore finds the Appellate order C. Cus. No. 97/2015 dated 20.03.2015 passed by the Commissioner of Customs (Appeals) as legal and proper does not warrant any interference.

10. Revision Application is dismissed.

11. So, ordered.

Ashok Kumar Mehta
4.5.2018

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

ORDER No. ⁹⁹⁰290/2018-CUS (SZ) /ASRA/MUMBAI. DATED 04.05.2018

To,

Shri Syed Khajapeer
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
SANKARSAN MUNDA
Asstt. Commissioner of Customs & C. Ex.

