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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. 373/203/B/15-RA

1/18th

Date of Issue 29/05/2018

ORDER NO. 296/2018-CUS (SZ) / ASRA / MUMBAI / DATED 17.05.2018 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 Abugani Abdhul Rahaman

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-I No.76/2015 dated 27.02.2015 passed by the Commissioner of Customs (Appeals-I) Chennai.



ORDER

This revision application has been filed by Shri Abugani Abdhul Rahaman (herein after referred to as the Applicant) against the Order in Appeal no. C. Cus-I No.76/2015 dated 27.02.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

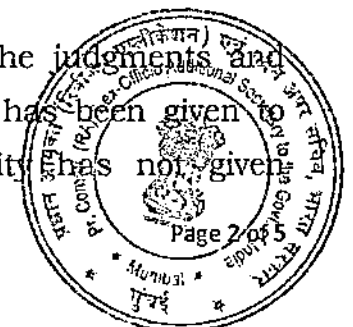
2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 26.11.2014 and was intercepted by the Customs Officers and examination of his baggage resulted in the recovery of 2 gold bits totally weighing 142 grams valued at Rs. 3,36,012/- (Three lakhs thirty six thousand and twelve) ingeniously concealed inside the dummy mobile phone battery compartment. After due process of the law vide Order-In-Original No. 1449/2014 Batch B dated 26.11.2014, the Original Adjudicating Authority absolutely confiscated the seized gold bits (2 nos.) totally weighing 142 grams valued at Rs. 3,36,012/- under section 111 (d), (e), (l), (m) & (o) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A penalty of Rs. 34,000/- was also imposed under Section 112 (a) of the Customs Act, 1962.

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals-I) Chennai, vide his Order in Appeal C. Cus-I No.76/2015 dated 27.02.2015 rejected the Appeal.

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

(i) Order of the respondent is against law, weight of evidence and circumstances and probabilities of the case. The gold is not prohibited item and according to the liberalized policy the gold can be released on payment of redemption fine and applicable duty.

(ii) The appellate authority simply glossed over all the judgments and points raised in the appeal grounds and no reason has been given to reject the appeal, further the adjudication authority has not given



sufficient opportunity while deciding the case though they said point has been raised in the appeals but the appellate authority has failed to apply his mind on these aspects and hence the impugned order is liable to be set aside on this point alone.

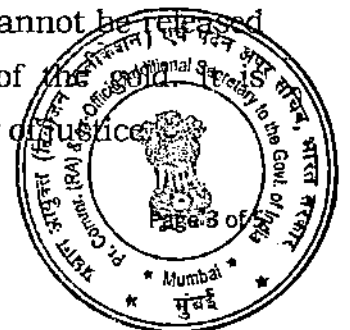
(iii) The finding of the adjudicating authority is not completely based on the statement recorded by the superintendent on the spot.

(iv) The Hon'ble Supreme Court said in recent judgments the object of the Customs authority should be to collect the duty not to punish the person who violated the provisions of Customs Act. The appellant was not aware that it was an offence to bring gold without proper documents that the gold belongs to him.

(v) the only allegation against him was that he had not declared the gold. Since he had kept the gold in his baggage at the time of interception of the officers. Further officers of Customs found the appellant kept in his baggage. The authority on one hand has stated that the passenger has not declared the contents of the baggage as per Section 77 of the said Act, on the other hand it is stated that he is not the owner of the goods. If authority had taken the stand that the passenger had not declared, then he cannot take the stand that he is not the owner of the baggage or goods.

(vi) the appellant further submits that it is an admitted fact the goods have been recovered from the appellant and hence he is entitled to get back the gold payment of baggage rate of duty. Further if the authority promptly read section 125 of the Customs Act 1962, the department cannot argue that the appellant is not the owner of the gold or carrier.

(vii) the contention of the department the owner or carrier is unsustainable under law, when the law permits to release the gold on payment of redemption fine and baggage rate of duty for gold have been recovered, the authority cannot interpret that the gold cannot be released on the ground that the appellant is not the owner of the gold. It is contrary to law and abuse of process of law and mockery of justice.



(viii) this Hon'ble authority may be pleased to set aside the impugned order dated 27.02.2015 and to permit him to re export or release the gold and also reduce the personal penalty sum of Rs 34,000/- and thus render justice.

5. A personal hearing in the case was held on 19.4.2018, the Advocate for the respondent Shri Palani Kumar attended the hearing. He re-iterated the submissions filed in Revision Application and submitted that the revision application be decided on merits. Nobody from the department attended the personal hearing.

6. The Government has gone through the case records and it is seen that the applicant arrived at the Chennai Airport on 26.11.2014 and was intercepted by the Customs Officers and examination of his baggage resulted in the recovery of two gold bits totally weighing 142 grams valued at Rs. 3,36,012/- (Three lakhs thirty six thousand and twelve) ingeniously concealed inside the dummy mobile phone battery compartment.

7. The Original Adjudicating Authority absolutely confiscated the seized gold bits (2 nos.) totally weighing 142 grams valued at Rs. 3,36,012/- under section 111 (d), (e), (l), (m) & (o) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A penalty of Rs. 34,000/- was also imposed under Section 112 (a) of the Customs Act, 1962. The Commissioner of Customs (Appeals-I) Chennai, vide his Order in Appeal C. Cus-I No.76/2015 dated 27.02.2015 was pleased to reject the Appeal filed by the applicant.

8. The Government notes that the applicant has ingeniously concealed the recovered gold biscuits in the mobile battery with the clear intent not to declare it to the Customs officers and to clear them clandestinely without declaration and without payment of Customs duty. Filing of true and correct declaration under the Customs Act 1962 is an absolute and strict obligation of any passenger as he was a frequent traveller and not an eligible passenger to import gold.

9. There is no doubt about the fact that the Applicant has contravened the provisions of Customs Act 1962. Therefore, the seized gold bits are liable for



absolute confiscation under provisions of the Customs Act, 1962 as the applicant had deliberately concealed the seized gold to avoid detection and to dodge the Customs authorities and smuggle out the same without payment of appropriate duty. This clearly indicates mens-rea, the Applicant had no intention of declaring the gold to the authorities and if he was not intercepted before the exit, the Applicant would taken out the gold bits 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 and the penalty has been rightly upheld. Hence the impugned Revision Application is liable to be dismissed.

10. Taking into consideration the foregoing discussion, Government upholds Order in appeal NO. C. Cus-I No.76/2015 dated 27.02.2015 and the impugned Revision Application is dismissed.

11. So, ordered.

Ashok Kumar Mehta
17.5.2018

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

ORDER No. 296/2018-CUS (SZ) /ASRA/MUMBAI DATED 17.05.2018.

True Copy Attested

To,
Shri Abugani Abdhul Rahaman
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai - 600 001.

Sankarsan Munda
15/5/18

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

Copy to:

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

