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SPEED POST

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

F.No. 373/229/B/15-RA

MRA

Date of Issue 29/05/2018

ORDER NO. 297/2018-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 C.V. Musthafa

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. 228 / 2015 dated 29.05.2015 passed by the Commissioner of Customs (Appeals-I) Chennai.



ORDER

This revision application has been filed by Shri C.V. Musthafa (herein after referred to as the Applicant) against the Order in Appeal no. C. Cus-I No. 228/2015 dated 29.05.2015 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 06.07.2014 and was intercepted by the Customs Officers and examination of his baggage i.e. bags and TV Carton resulted in the recovery of 32 numbers of gold bars of 10 tolas each, totally weighing 3728 grams valued at Rs. 1,05,98,704/- (One crore five lakhs ninety eight thousand seven hundred and four) ingeniously concealed in the old TV. After due process of the law vide Order-In-Original No.135/04/03/2015 dated 04.03.2015, the Original Adjudicating Authority absolutely confiscated the seized 32 numbers Ten Tola gold bars of 24 carat purity totally weighing 3728 grams and valued at Rs.1, 05,98,704/- (Rupees One Crore Five Lakhs Ninety Eight thousand seven hundred and four) under section 111 (d) & (l) of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992. Old TV used for concealing the goods was also absolutely confiscated under Section 119 of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992. A penalty of Rs. 10,00,000/- was also imposed under Section 112 (a) and (b) 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) Chennai, vide his Order in Appeal C. Cus-I No. 228/2015 dated 29.05.2015 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 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 baggage duty.

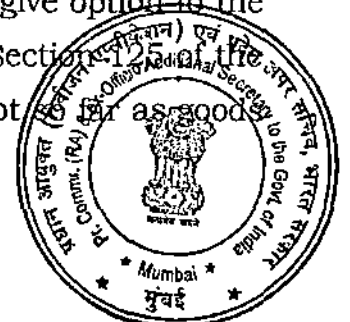
(ii) The appellate authority simply glossed over all the judgments and points raised in the appeal grounds and no reason has given to reject the appeal. Further adjudication authority has not given sufficient opportunity while deciding the case. Though the several points has been raised in the appeals but the appellate authority has failed to apply his mind on this aspect and hence the order is liable to be set aside on this point alone.

(iii) The appellant is owner of the gold and he was at the red channel in the arrival hall and had not crossed the green channel. He had all intentions to declare the seized gold to the Customs officers.

(iv) the goods must be prohibited before export or import, simply because non declaration the goods cannot become prohibited goods. Simply because of non-declaring the gold the department cannot become the owner of the goods. The authority has passed the order to absolute confiscation goods without any basis and there is no provision under the said Act for absolute confiscation. Therefore the authority has come to the conclusion that the gold is prohibited because of non declaration is nothing but clear non application of mind.

(v) the seized gold is belonging to him and he has purchased through his earnings and he has not brought it for third party and the same is belonging to his family for personal use and the same is not trade or commercial.

(vi) The Hon'ble High Court Andhra Pradesh judgment reported in 1997(91) ELT 277(AP) Sheikh Jamal Basha Vs Government of India 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. Section 125 of the Act leaves option to the officer to grant the benefit or not ~~for as goods~~

whose impose is prohibited but no such option is available in case the method of importation is illegal.

(vii) In view of the judgment of Om Prakash Bhatia, the Supreme Court had held that the main object of the Act is recovery of excise duty and not merely to punish for the infringement of the provisions.

(viii) In similar cases the department had given option to redeem the confiscated gold. Hence a lenient view may be taken in his case and confiscated gold may be allowed to redeemed for export on payment of redemption fine and taking a lenient view may also reduce penalty.

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 it is an undisputed fact that applicant had been intercepted by the Customs Officers and the examination of his baggage i.e. bags and TV Carton resulted in the recovery of 32 numbers of gold bars of 10 tolas each, totally weighing 3728 grams valued at Rs. 1,05,98,704/- (One crore five lakhs ninety eight thousand seven hundred and four) ingeniously concealed in the old TV.

7. The original adjudicating authority vide Order-In-Original No. 135/04/03/2015 dated 04.03.2015, had absolutely confiscated, the seized 32 numbers Ten Tola gold bars of 24 carat purity totally weighing 3728 grams and valued at Rs.1,05,98,704/- (Rupees One Crore Five Lakhs Ninety Eight thousand seven hundred and four) under section 111 (d) & (l) of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992. The old TV used for concealing the goods had also been absolutely confiscated under Section 119 of the Customs Act, 1962. A penalty of Rs. 10,00,000/- had been also imposed under Section 112 (a) and (b) of the Customs Act, 1962. The Commissioner of Customs (Appeals) Chennai, vide his Order in Appeal



C. Cus-I No. 228/2015 dated 29.05.2015 rejected the Appeal filed by the applicant and hence this revision application.

8. The applicant has contended in the revision application that he was intercepted before he crossed the green channel and he had all intentions to declare the gold. The Government is not inclined to agree with this contention of the applicant. The very sophisticated mode of ingeniously concealment of recovered 32 gold biscuits of ten tola each weighing 3728 grams and valued at Rs.1,05,98,704/- (Rupees One Crore Five Lakhs Ninety Eight thousand seven hundred and four) in the old television, carried by the applicant, as his baggage, tends to indicate his intention. If the applicant had any intention he would not have ingeniously concealed in the old TV.

9. The argument of the applicant that in the similar cases the adjudicating authority and appellate authority had allowed redemption of confiscated gold is also of no consequence. The fact and circumstances of each and every case are different and cannot be applied to the case of applicant. The argument of the applicant that gold is not prohibited and hence the adjudicating/appellate authority should have liberally allowed on redemption of fine is also not acceptable.

10. The ingenious concealment of gold reflects the mensrea of the applicant, as he had no intention to declare the gold to the Customs officers and pay customs duty. Therefore the contravention of the provisions of the Customs Act and FTDR Act are proved beyond doubt. The case laws mentioned by the applicant are not applicable to the instant case as such cases do not deserve any lenient view. Rather such economic offence cases should be dealt with the strict and stringent manner. The original adjudicating authority has rightly absolutely confiscated the seized gold and imposed penalty and Commissioner (Appeals) has rightly upheld the Order-in-Original.

11. Therefore the Government holds that the impugned order passed by the Commissioner Customs (Appeals) Order no C. Cus-I No. 228/2015 dated 29.05.2015 is legal and proper and is liable to be upheld and application filed by the applicant is liable to be dismissed.



12. Accordingly the Government upholds the impugned order in appeal and dismisses the instant revision application filed by the applicant.

13. So, Ordered.

*Ashok Kumar Mehta*  
17.5.2018

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

ORDER No. 297/2018-CUS (SZ) /ASRA/MUMBAI DATED 17.05.2018.

**True Copy Attested**

To,

Shri C.V. Musthafa  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High court, 2<sup>nd</sup> Floor,  
Chennai - 600 001.

*Sankarsan Munda*  
17/5/18

**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, Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

