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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. 373/224/B/15-RA / MS

Date of Issue 29/05/2018

ORDER NO. 300/2018-CUS (SZ) / ASRA / MUMBAI DATED 24.05.2018 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 Mohammed Haneefa

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.225/2015 dated 28.05.2015 passed by the Commissioner of Customs (Appeals-I) Chennai.



ORDER

This revision application has been filed by Shri Mohammed Haneefa (herein after referred to as the Applicant) against the Order in Appeal no. C. Cus-I No. 225/2015 dated 28.05.2015 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 25.02.2014 and was intercepted by the Intelligence Officers of Customs and examination of his baggage resulted in the recovery of 5 gold rods (coated with mercury) totally weighing 825 grams valued at Rs.25,36,875/- (Twenty five lakhs thirty six thousand eight hundred and seventy five) ingeniously concealed in beading portion of the stroller suitcase. He was arrested on 25.02.2014 and remanded to judicial custody. After due process of the law vide Order-In-Original No. 180/16/03/2015 dated 16.03.2015, the Original Adjudicating Authority absolutely confiscated the seized 5 gold rods totally weighing 825 grams valued at Rs. 25,36,875/- under section 111 (d) & (l) of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992. The "POLOBAT" black colour stroller suitcase used for concealing the gold 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. 2,40,000/- 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-I) Chennai, vide his Order in Appeal C.Cus-I No. 225/2015 dated 28.05.2015 rejected the Appeal.

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

4.1. That the order of the appellate authority 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 baggage duty;

4.2 he was the owner of the gold and he has purchased the gold from his own earnings at Dubai and brought the same for his family and at the time of interception at airport he also expressed willingness to pay the duty but they refused to accept the same; that the officers recorded his statement that he had brought the gold for monetary consideration is not correct and he has retracted his statement; Section 125 is open for the Authority to give an option for redemption against payment of fine and the Customs Act, 1962 does not make any distinction between the owner or the person carrying it;

4.3 It has also been pleaded that the Hon'ble Supreme Court has in the case of Om Prakash vs Union of India stated that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions; there is no provision in the Customs Act to confiscate absolutely, Hon'ble Supreme Court and High Court have in several judgments have stated that it is mandatory to give option under section 125 of the Customs Act, 1962 even when confiscation is authorized.

4.4 The Revision Applicant cited various assorted judgments in support of re-export even when the gold was concealed and prayed for permission to re-export the gold and reduced personal penalty.

5. A personal hearing in the case was held on 19.4.2018, the Advocate for the respondent Shri Palanikumar 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 it is seen that the Applicant had concealed the gold bars in the beading portion of the stroller suitcase. The Applicant in his voluntary statement recorded after his interception admitted that to earn profit of Rs. 350/- per gram on smuggled gold he planned with his friend to smuggled the gold weighing 825.000 grams. He also admitted that the gold was ingeniously concealed with the intention to hoodwink the customs authorities. Government also notes that the gold bars were not declared by the Applicant. The aspect of allowing the gold for re-export can be considered only when imports have been made in a legal manner and properly declared as per Section 77 of Customs Act, 1962. The actions of ingenious concealment of gold reflects the Mensrea of the Applicant that he had no intention of declaring the gold to the authorities and if he was not intercepted before exit, the Applicant would have taken out the gold pieces without payment of Customs duty.

7. 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.

8. The above acts have therefore rendered 5 gold rods totally weighing 825 grams liable for Confiscation under section 111 (d) & (I) of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992 and penalty of Rs. 2,40,000/- under Section 112 (a) and (b) of the Customs Act,1962. The Government therefore holds that the original authority has rightly confiscated the gold absolutely and imposed a penalty.



9. Taking into consideration the foregoing discussion, Government upholds the Order in Appeal C.Cus-I No. 225/2015 dated 28.05.2015 passed by the Commissioner of Customs (Appeals-I) Chennai upholding the Order-in-Original No. 180/16/03/2015 dated 16.03.2015 as legal and proper and does not warrant any interference.

10. Revision Application is dismissed.

11. So, ordered.

(Handwritten Signature)
24.5.18

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No 300/2018-CUS (SZ) /ASRA/MUMBAI DATED 24.05.2018.

To,

True Copy Attested

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

(Handwritten Signature)

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.

