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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. 373/89/B/15-RA / W^U

Date of Issue 29/05/2018

ORDER NO. 302/2018-CUS (SZ) / ASRA / MUMBAI DATED 25.05.2018 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 Imran

Respondent : Commissioner of Customs (Airport), Tiruchirapalli..

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No.03/2015 dated 13.02.2015 passed by the Commissioner of Customs & Central Excise (Appeals-2) Tiruchirapalli.



ORDER

This revision application has been filed by Shri Syed Imran (herein after referred to as the Applicant) against the Order in Appeal no. 03/2015 dated 13.02.2015 passed by the Commissioner of Customs (Appeals-2), Tiruchirapalli.

2. Briefly stated the facts of the case are that the applicant, arrived at the Trichy Airport on 30.12.2013 and was intercepted by the officers of Air Intelligence Unit, Trichy, when he was crossing the green channel with his luggage. The examination of his Check-in luggage resulted in the recovery of four gold biscuits weighing 399.6 grams valued at Rs.11,76,822/- (Eleven lakhs seventy six thousand eight hundred and twenty two) concealed in four locks i.e. in each lock one gold biscuit was concealed. After due process of the law vide Order-In-Original No. 33/2014 dated 22.12.2014, the Original Adjudicating Authority absolutely confiscated the goods under seizure i.e. (1) four gold biscuits weighing 399.6 grams valued at Rs.11,76,822/- under section 111 (d), (i), (l) and (m) of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992, (2) the four locks (with keys) valued at Rs.600/- used as cover cargo under Section 118(a) of the Customs Act, 1962, and (3) the four locks without keys (NCV) used to conceal the four gold biscuits under Section 119 of the Customs Act, 1962. A penalty of Rs. 1,00,000/- was also imposed under Section 112 (b) of the Customs Act, 1962.

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Trichy. The Commissioner of Customs (Appeals) Trichy, vide his Order in Appeal no. C24/03/2015-Try (Cus) dated 13.02.2015 rejected the Appeal.

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

4.1. 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 as the gold biscuit were recovered from him he was entitled to get back the gold on payment of baggage rate of duty; 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 for absolute confiscation of goods in the Customs Act; there are several Judgements by the Revisionary authority, CESTAT, 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.

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 to reduce personal 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 it is seen that the Applicant was frequent traveller, whose stay abroad was never more than six months; Government also notes that the applicant had been intercepted by the Customs Officers and on examination of his baggage 4 gold biscuits



concealed in 4 locks ie one in each lock were found. The Applicant in his statement recorded after his interception admitted that he was getting commission for carrying items from foreign countries to India.

7. Government also notes that that the gold biscuits were ingeniously concealed with the intention to hoodwink the customs authorities and the same 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 biscuits without payment of 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 applicant to the instant case as such cases do not deserve any lenient view. Rather such economic offence cases should be dealt with strict and stringent manner. The original adjudicating authority has rightly absolutely confiscated the seized gold and impose penalty and commissioner (Appeals) has rightly upheld the Order-in-Original.

8. 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.

9. The above acts have therefore rendered 4 (four) gold biscuit 399.6 grams liable for Confiscation under section 111 (d), (i), (I) & (m) of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992 and penalty of Rs. 1,00,000/- (One lakh only) 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.

10. Taking into consideration the foregoing discussion, Government upholds the Order in Appeal No. 03/2015 dated 13.02.2015 passed by the Commissioner of Customs (Appeals) Tiruchirappalli upholding the Order-in-Original No. 33/2014 dated 22.12.2014, as legal and proper and does not warrant any interference.

11. Revision Application is dismissed.

12. So, ordered.

Ashok Kumar Mehta
25.5.18

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

ORDER No. 302/2018-CUS (SZ) /ASRA/MUMBAI DATED 25.05.2018.

To,

True Copy Attested

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

Sankarsan Munda
SANKARSAN MUNDA
Asstt. Commissioner of Customs & C. Ex.

Copy to:

1. The Commissioner of Customs, International Airport, Trichy.
2. The Commissioner of Customs (Appeals), Trichy
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

