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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. 373/59/B/15-RA/SB

Date of Issue 31.05.2018

ORDER NO. 301/2018-CUS (SZ) / ASRA / MUMBAI DATED 30.05.2018 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 Sharif Prem Nazir

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.12/2015 dated 14.01.2015 passed by the Commissioner of Customs (Appeals-I) Chennai.



ORDER

This revision application has been filed by Shri Sharif Prem Nazir (herein after referred to as the Applicant) against the Order in Appeal No. C. Cus-I No.12/2015 dated 14.01.2015 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 02.12.2013 and was intercepted by the Customs Officers and examination of his baggage resulted in the recovery of two gold rods totally weighing 385.5 grams and totally valued at Rs. 11,64,595/- (Eleven lakhs sixty four thousand five hundred and ninety five). The two gold rods were ingeniously concealed in the metal rods of the stroller suitcase and stroller bag brought by the Applicant.

3. After due process of the law vide Order-In-Original No. 934/26/11/2014 dated 26.11.2014, the Original Adjudicating Authority absolutely confiscated the seized two numbers of gold rods totally weighing 385.5 grams and totally valued at Rs. 11,64,595/- under section 111 (d) & (l) of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992; and also absolutely confiscated the two stroller suitcases and dismantled pieces of railings of the said suitcases used for concealing the gold under the Section 119 of the Customs Act, 1962 read with Foreign Trade (Development & Regulation) Act, 1992. A Personal penalty of Rs. 1,00,000/- was also imposed under Section 112 (a) of the Customs Act, 1962.

4. 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.12/2015 dated 14.01.2015 rejected the Appeal.

5. The applicant has filed this Revision Application interalia on the grounds that;
 5.1 the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; Gold is not a prohibited item and as per liberalized policy gold can be released on payment of redemption fine and penalty; The Applicant had submitted a representation which was not considered; The documents relied upon in the Show Cause Notice were not handed over to the Applicant; Section 125 of the Customs Act does not make any distinction between the owner and the carrier; the authority one way states that the passenger has not declared the goods and also simultaneously avers that he is not the owner of the goods; Assuming without admitting that the Applicant is not the owner of the goods, then the question of declaration does not arise, only the owner can declare the goods.



5.2 The Applicant further pleaded that the CBEC circular 9/2001 gives specific directions stating that a declaration should not be left blank, if not filled in the Officer should help the passenger to fill in the declaration card; 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; section 111 (d) (l) (m) and (o) of the Customs Act, 1962 are not applicable in the case. He is the owner of the gold and he has not brought it for a third party.

5.3 Hon'ble High Court of Andhra Pradesh in the case of Sheikh Jamal Basha vs GOI 1997 (91) ELT 277 (AP) has held that under section 125 of the Act, it is Mandatory duty to give option to the person found guilty to pay fine in lieu of confiscation; The Apex court in the case of Hargovind Dash vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has pronounced that the quasi judicial authorities should use the discretionary powers in a judicious and not an arbitrary manner;

5.4 The Revision Applicant cited various assorted judgments and boards policies in support of allowing gold for redemption under section 125 of the Customs Act, 1962 and prayed for setting aside the impugned order and for re-export of the gold and reduce personal penalty.

6. A personal hearing 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.

7. The Government has gone through the case records it is seen that the gold rods were ingeniously concealed in metal bars of the stroller suitcase brought by the Applicant. Government also notes that the gold bars were not declared by the Applicant. Filing of true and correct declaration under section 77 of the Customs Act, 1962 is an absolute and strict obligation of any passenger arriving in India.

8. Further, the applicant had deliberately concealed the seized gold in the metal bars to avoid detection and to dodge the Customs authorities and smuggle out the same, this clearly indicates mensrea. He 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 bars without payment of customs duty. There is no doubt about the fact that the Applicant has contravened the provisions of Customs Act, 1962, therefore the seized gold rods are liable for absolute confiscation under provisions of the Customs



Act, 1962. 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. Hence the Revision Application is liable to be rejected.

9. Taking into consideration the foregoing discussion, Government upholds the Order in Appeal C. Cus-I No.12/2015 dated 14.01.2015

10. Revision Application is dismissed.

11. So, ordered.

(Signature)
20.5.18

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

ORDER No.304/2018-CUS (SZ) /ASRA/MUMBAI DATED 30.05.2018

To,

True Copy Attested

Shri Sharif Prem Nazir
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High Court, 2nd Floor,
Chennai - 600 001.

(Signature)
30/5/18

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.

