



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

F.No. 373/246/B/15-RA

Date of Issue 05/06/2018

ORDER NO. 32/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 29.05.2018 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. Mohamed Riyaz

Respondent : Commissioner of Customs(Airport), Cochin.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal COC-CUS-000-APP-78/2015-16 dated 10.07.2015 passed by the Commissioner of Customs (Appeals) Cochin.



ORDER

This revision application has been filed by Shri. Mohamed Riyaz against the order no C.Cus No. COC-CUS-000-APP-78/2015-16 dated 10.07.2015 passed by the Commissioner of Customs (Appeals), Cochin.

2. Briefly stated facts of the case are that the applicant, an Indian National arrived at the Chennai Airport on 07.04.2014. Examination of his baggage resulted in recovery of one gold rod totally weighing 529 gms valued at 13,75,748/- (Rupees Thirteen lacs Seventy Five thousand and Seven hundred and Forty eight). The gold rod was painted black and ingeniously concealed inside the printer cartridge along with the tonner. The Original Adjudicating Authority, vide his order 11/2014 dated 04.06.2014 absolutely confiscated the gold referred to above. A Penalty of Rs. 2,00,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant.

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 No. COC-CUS-000-APP-78/2015-16 dated 10.07.2015 rejected the Appeal.

4. 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 can be released on redemption fine and penalty; The hon'ble Supreme Court has in recent judgements held that the object of the Customs Authority is to collect duty and not to punish the person for violating the provisions of the Customs Act; The impugned gold was kept in his baggage; He was all along under the control of the officers at the Red channel there is no allegation that he tried to clear the green channel; Section 125 of the Customs Act does not make any distinction between the owner and the carrier; The eligibility for concessional duty has been misconstrued as if it is eligibly to bring in the gold.

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5.2 The Applicant further pleaded that The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record the oral declaration; The Hon'ble High Court of Andhra Pradesh in the case of Sheikh Jamal Basha vs GOI 1997 (91) ELT 277 (AP) has stated 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; 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; 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;

5.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing re-export of the gold prayed for setting aside the impugned order and order re-export on payment of nominal redemption fine and reduced personal penalty and render justice.

5. A personal hearing in the case was held on 19.04.2018, 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 observed that the Applicant did not declare the gold piece at the time of interception. The gold bar was ingeniously concealed inside the printer cartridge along with the tonner and painted black. There is absolutely no doubt that the concealment was intelligently planned so as to evade Customs duty and to smuggle the gold into India. The aspect of allowing the gold for re-export can be considered when imports have been made in a legal manner. This is not a simple case of mis-declaration.

(Signature)



The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and that the Applicant had no intention of declaring the gold to the authorities and if he was not intercepted before the exit, would have escaped payment of customs duty.

7. The above acts have therefore rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed penalty. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.

8. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C. Cus. COC-CUS-000-APP-78/2015-16 dated 10.07.2015 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

9. Revision Application is dismissed.

10. So, ordered.

Ashok Kumar Mehta
29.5.2018

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

ORDER No. 224/2018-CUS (SZ) /ASRA/MUMBAI

DATED 29.05.2018

To,

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

True Copy Attested

Sankarsan Munda
29/5/18
SANKARSAN MUNDA
Asstt. Commissioner of Customs & C. Ex.

Copy to:

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

