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SPEED POST

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

F.No. 373/95/B/15-RA

Date of Issue 05/06/2018

ORDER NO. ³²⁵ /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 Moorthy Muthu

Respondent : Commissioner of Customs (Airport), Trichy.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. 02/2015-
TRY(CUS) dated 12.02.2015 passed by the Commissioner of
Customs & C.Ex (Appeals) Trichy.



ORDER

This revision application has been filed by Shri Moorthy Muthu (herein after referred to as the Applicant) against the Order in Appeal No. 02/2015-TRY(CUS) dated 12.02.2015 passed by the Commissioner of Customs (Appeals-I), Trichy.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 14.01.2014 and was intercepted by the Customs examination of his person resulted in the recovery of two gold biscuits on an imitation chain worn by him weighing 206 grams valued at Rs. 6,10,000/- (Rupees Six lacs Ten thousand).

3. After due process of the law vide Order-In-Original No. 21/2014 dated 20.11.2014, the Original Adjudicating Authority absolutely confiscated the two gold bars under section 111(d),(l),(m) & (o) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A Personal penalty of Rs. 1,20,000/- 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 No. 02/2015-TRY(CUS) dated 12.02.2015 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; The chain was worn on his neck and it was not concealed; 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; He had orally declared the gold and also showed it to the officers having seen the same the question of declaration does not arise; The gold was purchased from his own earnings and is the owner of the gold; Even assuming without admitting that he had not declared the gold it is only a technical fault.

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 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; The absolute confiscation of the gold is unreasonable there are several judgments of higher Courts which states that it is mandatory to exercise the power under section 125 of the Customs Act,1962.



5.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing re-export, and prayed for allowing re-export on payment of nominal redemption fine and reduced personal penalty and thus 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 facts of the case. It is a fact that the gold was not declared by the Applicant as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the gold is justified.

7. However, the facts of the case state that the Applicant was intercepted before he exited the Green Channel. The gold is claimed by the Applicant and there is no other claimant. The gold biscuits were set on a chain which was worn by the Applicant and therefore it was not ingeniously concealed. There are no previous offences registered against the Applicant. 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 to the oral declaration on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant.

8. Further, There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. The absolute confiscation of the gold is therefore harsh and unjustified. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The Applicant has pleaded for re-export and the Government is inclined to accept the plea. The order of absolute confiscation of the gold in the impugned Order in Appeal therefore needs to be modified and the confiscated gold is liable to be allowed for re-export on payment of redemption fine and penalty.

9. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold for re-export in lieu of fine. The four gold bars totally weighing 206 grams valued at Rs. 6,10,000/- (Rupees Six lacs Ten thousand) is



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ordered to be redeemed for re-export on payment of redemption fine of Rs. 2,50,000/- (Rupees Two lakhs Fifty thousand) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 1,20,000/- (Rupees One lakh Twenty thousand) to Rs.75,000/- (Rupees Seventy Five thousand) under section 112(a) of the Customs Act,1962.

10. The impugned Order in Appeal stands modified to that extent. Revision application is partly allowed on above terms.

11. So, ordered. .

(Handwritten Signature)
29.05.2018

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

ORDER No. ³²⁵/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 29.05.2018

To,

True Copy Attested

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

(Handwritten Signature)
SANKARSAN MUNDA
Asst. Commissioner of Custom & C. Ex.

Copy to:

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

