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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. 373/167/B/14-RA

Date of Issue 01-06-2018

ORDER NO. 320/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 31.05.2018 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 Shaikh Hussein Basha
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 No. 165 & 166/2015 dated 30.03.2015 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Shaikh Hussein Basha (herein after referred to as the Applicant) against the order no C. Cus No. 165 & 166/2015 dated 30.03.2015 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case is that the Applicant, Shri Shaikh Hussein Basha arrived at the Chennai Airport on 24.02.2014. He was intercepted by the officers of the Customs as he was walking through the green channel without declaration. Examination of his baggage and person resulted in the recovery of 5 (Five) gold bars and 3 (three) cut gold pieces totally weighing 1832 gms totally valued at Rs. 56,27,904/- (Rupees Fifty Six lacs Twenty Seven thousand Nine hundred and four). The gold was ingeniously concealed in two packets kept in specially made pockets stitched on his underwear. The impugned gold was given to Shri Shaikh Hussein Basha by Shri Noor Sulaiman in Kuwait to be handed over to the Applicant, Shri Noor Mohamed.

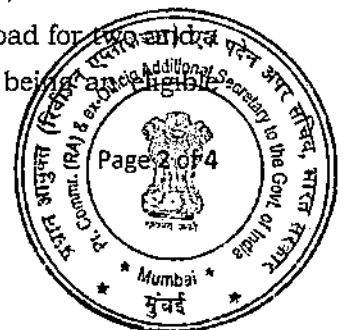
3. The Original Adjudicating Authority vide Order-In-Original No. 1031 dated 27.12.2014 ordered for absolute confiscation of the impugned gold under Section 111 (d), and (l) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 5,50,000/- on Shri Shaikh Hussein Basha and penalty of Rs. 2,00,000/- on Shri Noor Mohamed under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C. Cus No. 165 & 166/2015 dated 30.03.2015 rejected the appeal of the applicant.

5. The applicant has filed this Revision Application interalia on the following grounds that;

5.1. The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The Appellate Authority has not applied his mind and has simply glossed over the judgments and points raised in the Appeal grounds; The Adjudication Authority has not considered the Retraction of the Applicant, as his stament was not voluntary; He never tried to go through the green channel, and till then there is every possibility to change his mind and declare the gold; That He was all along at the red channel under the control of the officers, the CCTV record of the needs to be viewed in the interest of justice;

5.2 The Applicant further pleaded that As he had stayed abroad for two and a half years he is eligible to bring gold at concessional rate, and being an eligible



passenger the adjudication authority should have allowed re-export of release the gold at concessional rate of duty; Ownership of the gold is not a criterion for its eligibility to be imported; Section 125 does not make any distinction between the owner and carrier of the goods; The Appellate Authority states that the Applicant has not declared the goods, and on the other hand states that the Applicant is not the owner of the goods, Even assuming without admitting that the Applicant is not the owner the question of declaration does not arise; the adjudication authority cannot negate the ownership and yet state that a declaration under section 77 is not filed.

5.3 The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled, but it was not such an exercise was not done by the officers; 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 Applicant is not a frequent traveler and has no previous offence registered against in.

5.4 The Revision Applicant cited various assorted judgments in support of re-export even when the gold was concealed and prayed for setting aside the impugned order and permission to re-export the gold on payment of nominal redemption fine and reduced personal penalty.

6. A personal hearing in the case was held on 19.04.2018, the Advocate for the respondent Shri Palanikumar re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed. Nobody from the department attended the personal hearing.

7. The Government has gone through the case records it is observed that the Applicant was given enough opportunities to declare the gold, he however did not declare the gold pieces at the time of interception. The gold pieces were ingeniously concealed in two packets kept in specially made pockets stitched on his underwear. 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 and properly declared as per Section 77 of the Customs Act, 1962. The actions of the Applicant indicate that 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 pieces without payment of customs duty. He has voluntarily accepted to carry the gold concealed in his underwear so as to evade customs duty and this indicates mensrea.



8. 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 a penalty of Rs. 5,50,000/-. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.

9. The Government therefore finds the Appellate order C. Cus. No. 165 & 166/2015 dated 30.03.2015 passed by the Commissioner of Customs (Appeals) as legal and proper does not warrant any interference.

10. Revision Application is dismissed.

11. So, ordered.

(Handwritten Signature)
31.5.2018

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

ORDER No. 320/2018-CUS (SZ) /ASRA/MUMBAI

DATED 31.05.2018

To,

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

Copy to:

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

True Copy Attested

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

