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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. 373/80/B/15-RA | 580

Date of Issue 06/06/2018

ORDER NO. ³³⁶ /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 Rahuman Khan

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. 100/2015 dated 24.03.2015 passed by the Commissioner of Customs (Appeals-I) Chennai.



ORDER

This revision application has been filed by Shri Rahuman Khan (herein after referred to as the Applicant) against the Order in Appeal No. C. Cus-I No. 100/2015 dated 24.03.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case are that the one Shri Abdul Kafoor Peer Mohamed, arrived at the Chennai Airport on 25.08.2013 and was intercepted by the Customs examination of his baggage resulted in the recovery of one gold bar and two gold bits, totally weighing 156.9 grams valued at Rs. 5,19,339/- (Five lacs Nineteen thousand Three hundred and thirty nine). The gold was wrapped in a brown adhesive tape and ingeniously concealed inside a biscuit tin. Investigations revealed that the gold was to be handed over to the Applicant. The Applicant has in his statement accepted ownership of the gold and accepted that he had requested the person in Malaysia to send the gold through Shri Abdul Kafoor Peer Mohamed.

3. After due process of the law vide Order-In-Original No. 1028/27.12.2014 dated 27.12.2014, the Original Adjudicating Authority absolutely confiscated the gold under section 111(d) and (l) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A Personal penalty of Rs. 50,000/- each was also imposed on Shri Abdul Kafoor Peer Mohamed and the Applicant under Section 112 (a) and (b) 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. 100/2015 dated 24.03.2015 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 can be released on redemption fine and penalty; The Appellate Authority has glossed over the judgments and points raised in the Appeal grounds; He had taken a loan for his sisters marriage to repay the loan he had asked his friend Shri Abdul Kafoor Peer Mohamed to collect the gold and bring it into India; He had asked his friend to declare the gold which was not done; The Applicant is the owner of the gold and also expressed his willingness to redeem the same on payment of appropriate duty which was not considered; Section 125 of the Customs Act does not make any distinction between the owner and the carrier;



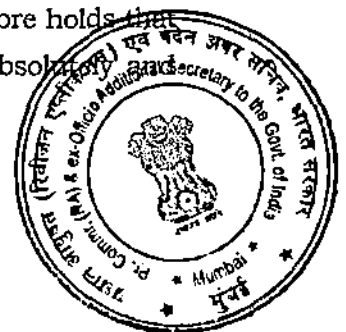
5.2 The Applicant further pleaded that The Hon'ble High Court of Andhra Pradesh in the case of Sheikh Jamal Basha vs GOI 1997 (91) ELT 277 (AP) has stated held that under section 125 of the Act is Mandatory duty to give option to the person found guilty to pay fine in lieu of confiscation; The Apex court 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 absolute confiscation of the gold and imposition of penalty was high and unreasonable. 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 chain on payment of nominal redemption fine and reduced personal penalty and prayed for 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 pieces at the time of interception. The gold bar and bits were ingeniously concealed in a biscuit tin. The gold was routed through another passenger who has admitted that the gold was concealed inside a biscuit tin and that the concealment was 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. 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.

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.



imposed penalty. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.

9. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C. Cus. 100/2015 dated 24.03.2015 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

10. Revision Application is dismissed.

11. So, ordered.

Ashok Kumar Mehta
31.5.18

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

ORDER No. ³³⁶/2018-CUS (SZ) /ASRA/MUMBAI

DATED 31-05-2018

To,

True Copy Attested.

Shri Rahuman Khan

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

Sankar San Munda
6/6/18
SANKARSAN MUNDA
Asstt. Commissioner of Customs & 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.

