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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. 373/185/B/15-RA/587

Date of Issue 06/06/2018

ORDER NO. 339/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 31.03.2018 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. N. Mohamed Azaruddin

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. 177/2015 dated 20.04.2015 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri. N. Mohamed Azaruddin (herein after referred to as the "Applicant") against the order no C.Cus No. 177/2015 dated 20.04.2015 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, an Indian National arrived at the Chennai Airport on 21.05.2014. Examination of his baggage resulted in recovery of gold rods totally weighing 1004 gms valued at Rs. 29,27,162/- (Rupees Twenty nine Lakhs Twenty seven thousand and One hundred and sixty two) these gold rods were ingeniously concealed inside the steel rods of a hammer and a chisel. The Original Adjudicating Authority, vide his order 136/04.03.2015 absolutely confiscated the gold referred to above. A Penalty of Rs. 2,75,000/- 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. 177/2015 dated 20.04.2015 rejected the Appeal.

4. The applicant has filed this Revision Application inter alia 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 can be released on redemption fine and penalty; The adjudication authority has not taken cognizance that the Applicant has not received the Show Cause Notice, and has passed the order in clear violation of natural justice; The Appellate Authority has glossed over the judgments and points raised in the Appeal grounds; The Applicant has retracted his statements and has claimed the gold; Section 125 of the Customs Act does not make any distinction between the owner and the carrier; Even assuming without admitting that the passenger is not the owner of the gold, then the question of declaration does not arise as the declaration has to be given



by the owner; Therefore the authority cannot take a stand that a declaration was not given by the passenger; Goods must be prohibited before import or export simply because of non-declaration will not make the goods prohibited. The eligibility for concessional duty has been misconstrued as if it is eligibility to bring in the gold.

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 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 allowed 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 at the time of interception. The gold rods were ingeniously concealed in the inside the steel rods of a hammer and a chisel. 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. 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 and 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. 177/2015 dated 20.04.2015 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

10. Revision Application is dismissed.

9. So, ordered.

(Handwritten Signature)
21.5.2018

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

ORDER No. ³³⁹/2018-CUS (SZ) /ASRA/mum&A.

DATED 31.05.2018

To,

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

True Copy Attested

(Handwritten Signature)
26/6/18

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), Custom House, Rajaji Salai Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

