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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. 373/88/B/15-RA

Date of Issue 28/06/2018

ORDER NO. 376/2018-CUS (SZ) / ASRA / MUMBAI DATED 28.05.2018 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 Siyan Rameen

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. 70/2015 dated 27.02.2015 passed by the Commissioner of Customs (Appeals-I) Chennai.



ORDER

This revision application has been filed by Shri Mohamed Siyan Rameen (herein after referred to as the Applicant) against the Order in Appeal No. C. Cus-I No. 70/2015 dated 27.02.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case are that the applicant, a Sri Lankan National arrived at the Chennai Airport on 27.07.2013 and was intercepted by the Customs Officers and on examination of his person resulted in the recovery of gold jewelry weighing 200 grams valued at Rs. 5,53,900/- (Five Lakhs Fifty three thousand nine hundred) from his pant pocket. After due process of the law vide Order-In-Original No. 04/06.01.2015, the Original Adjudicating Authority confiscated the gold jewelry weighing under section 111(d) & (l) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992, giving him an option to redeem the gold on payment of Rs. 1,75,000/- (Rupees One Lakh Seventy five thousand). A Personal penalty of Rs. 50,000/- was also imposed under Section 112 (a) of the Customs Act, 1962.

3. 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. 70/2015 dated 27.02.2015 rejected the Appeal.

4. The applicant has filed this Revision Application inter alia on the grounds that;

4.1 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 glossed over the judgments and points raised in the Appeal grounds; Applicant had worn the gold jewelry when he was intercepted by the officers when he was intercepted by the officers; the gold was purchased by him out of his own earnings; The only allegation against him is that he did not declare the gold; As he had worn the gold and it was visible the question of declaration does not arise; He did not pass through the green channel and was all along under the control of the Officers at the Red Channel;

4.2 The Applicant further pleaded that As per the circular 394/71/97-CUS (AS) GOI dated 22.06.1999 states that arrest and prosecution need not be considered in routine in respect of foreign nationals and NRIs who have inadvertently not declared; 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; Gold is not a prohibited item and according to the liberalized policy the gold can be released on payment of Redemption Fine and Penalty. The Hon'ble High Court of Andhra Pradesh in the case of Sheikh Jamal Basha vs GOI 1997 (91) ELT 277 (AP) has held that under section 125 of the Act it 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;

4.3 The Revision Applicant cited various assorted judgments and boards policies in support of his case and prayed for reduction of redemption fine and reduced personal penalty.

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 carefully gone through the facts of the case. A proper disclosure was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and had he not been intercepted he would have gone without paying the requisite duty, under the circumstances confiscation of the gold is justified.

7. Government observes that the Original Adjudicating Authority has rightly exercised the option available under section 125 of the Customs Act, 1962 and has rightly extended the option to redeem the gold on payment of redemption fine and penalty. Further, the Government notes that the redemption fine of Rs. 1,75,000/- (Rupees one lac Seventy Five thousand) is appropriate and the penalty of Rs. 50,000/- imposed on the gold weighing 200 grams valued at Rs. 5,53,900/- (Five Lakhs Fifty three thousand nine hundred) is also appropriate. Under the circumstances, the Government 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 70/2015 dated 27.02.2015 passed by the Commissioner of Customs (Appeals-I) Chennai, is upheld as legal and proper.



9. Revision Application is dismissed.

11. So, ordered.

(Handwritten Signature)
28/5/18

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

ORDER No.356/2018-CUS (SZ) /ASRA/Mumbai

DATED 28.05.2018

To,

True Copy Attested

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

(Handwritten Signature)
28/6/18

एस. आर. हिरुलकर
S. R. HIRULKAR
(A.C)

Copy to:

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

