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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005F.No. 373/200/<sup>B/</sup>15-RA | <sup>Dut</sup>

Date of Issue 29/06/2018

ORDER NO. 360/2018-CUS (SZ)/ASRA/MUMBAI DATED 30.05.2018 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. Abdul Kader Fakrudeen

Respondent : Commissioner of Customs, Bangalore.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 301/2015 dated 27.03.2015 passed by the Commissioner of Customs (Appeals), Bangalore.



ORDER

This revision application has been filed by Shri Abdul Kader Fakrudeen (herein referred to as Applicant) against the order 301/2015 dated 27.03.2015 passed by the Commissioner of Customs (Appeals), Bangalore.

2. Briefly stated facts of the case are that the applicant, an Indian national had arrived at the Bangalore Airport on 14.02.2013. Examination of his baggage resulted in the recovery of 48 ICOM FM Transceivers along with accessories and brackets totally valued at Rs.8,84,115/- ( Rupees Eight Lakhs Eighty Four thousand one hundred and fifteen ).

3. The Original Adjudicating Authority, vide order No. 105/2013 dated 05.12.2013 absolutely confiscated the items mentioned above under section 111(d),(l) & (m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A Personal penalty of Rs. 70,000/- was also imposed under Section 112 (a) of the Customs Act,1962. A personal penalty of Rs. 20,000/- was also imposed under section 114AA of the Customs Act,1962.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Bangalore The Commissioner of Customs (Appeals) Bangalore, vide his order No. 301/2015 dated 27.03.2015 rejected the Appeal of the Applicant.

5. 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; The Appellate Authority has simply glossed over all the judgements and points raised in the Appeal grounds; The case relates to import whereas the Authority has imposed penalty under Section 114AA which relates to export of goods; When penalty is imposed under section 114AA, penalty cannot be imposed under section 112 of the Customs Act; he had properly declared the value as Rs. 2,75,000/- as he had purchased the goods at Singapore for 6500SGD, however the department have relied upon internet rates; 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 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;



Om

5.3 Further, CBEC circular No. 09/2001 gives specific directions to the officers that the declaration should not be left blank. If not filled in by the passenger the officer will help in filing up the declaration card; 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;

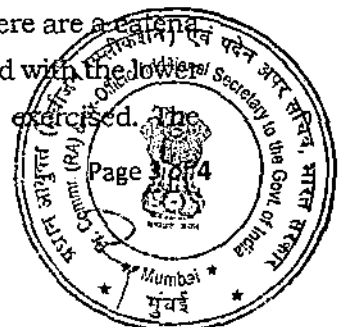
5.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing gold for re-export on redemption fine under section 125 of the Customs Act, 1962 and prayed for permission to re-export the goods on payment of nominal redemption fine and reduced personal penalty.

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

7. The Government has gone through the facts of the case. It is a fact that the goods were not declared by the Applicant as required under Section 77 of the Customs Act, 1962, and under the circumstances confiscation of the goods is justified.

8. However, the facts of the case state that the Applicant was intercepted before he exited the Green Channel. The goods were 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.

9. The Government also observes that the adjudication authority has relied upon internet prices for arriving at the value of the goods. The Hon'ble Supreme Court in the case of M/s Aggarwal Distributors (P) Ltd. Vs Commissioner of Customs New Delhi reported in 2000(117) ELT 49 (Tribunal) has categorically stated that " Documents displayed on internet, being unsigned are not reliable and cannot be relied upon to calculate value". It is also observed that the higher valuation of the goods by the adjudication authority has led to imposition of higher redemption fine and penalty. The impugned goods have also deteriorated in value over the years. Further, There are a number 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.



absolute confiscation of the goods 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 goods in the impugned Order in Appeal therefore needs to be modified and the confiscated goods is liable to be allowed for re-export on payment of redemption fine and penalty. Government also holds that no penalty is imposable under section 114AA of the Customs Act, 1962 as this provision is not attracted in baggage cases.

9. In view of the above, Government allows redemption of the confiscated goods for re-export in lieu of fine. The impugned goods valued at 8,84,115/- ( Rupees Eight Lakhs Eighty Four thousand one hundred and fifteen ) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 3,00,000/- (Rupees Three lakhs ) under section 125 of the Customs Act, 1962. Government observes that the penalty of Rs. 70,000/- (Rupees Seventy thousand) is appropriate. The penalty of Rs. 20,000/- (Rupees Twenty thousand ) under section 114AA is not held to be imposable here, the penalty is therefore set aside.

10. The impugned Order in Appeal stands modified to that extent.

11. Revision application is partly allowed on above terms.

12. So, ordered.

*Ashok Kumar Mehta*  
24/5/18  
(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No.360/2018-CUS (SZ) /ASRA/MUMBAI

DATED 30-05-2018

To,

Shri Abdul Kader Fakrudeen  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High Court, 2<sup>nd</sup> Floor,  
Chennai - 600 001.

**True Copy Attestatā**

*S. R. Hiruliker*  
24/5/18  
एस. आर. हिरुलकर  
S. R. HIRULIKER  
(A-C)

Copy to:

1. *gco* The Commissioner of Customs, Bangalore.
2. The Commissioner of Customs (Appeals), Bangalore.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

