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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. 373/171/B/16-RA/917 Date of Issue 06/07/2018

ORDER NO.383/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 01.06.2018 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 Kaliyappan

Respondent : Commissioner of Customs(Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 252/2016 dated 28.06.2016 passed by the Commissioner of Customs (Appeals) Chennai.

ORDER

This revision application has been filed by Shri Kaliyappan (herein after referred to as the Applicant) against the order No. 252/2016 dated 28.06.2016 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case is that on 03.11.2015 the Applicant was intercepted by the officers of Air Intelligence Unit. Examination of his baggage resulted in the recovery of gold pieces weighing 200 grams valued at Rs. 5,36,400/- (Rupees Five lakhs Thirty Six thousand four hundred) ingeniously concealed in the cilindrical door lock brought by the Applicant.

3. The Original Adjudicating Authority vide Order-In-Original No. 494/2016-17 dated 29.02.2016 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. 53,000/- 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. 252/2016 dated 28.06.2016 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 simply glossed over all the judgements and points raised in the Appeal grounds; Gold is not a prohibited item and can be released on payment of redemption fine and baggage duty; He had purchased the gold using his own earnings; He was intercepted in the flight and later was all along at the green channel under the control of the officers; He has not attempted to pass through the green channel; Section 125 of the customs Act 1962 does not make any distinction between the owner and the carrier; Section 125 of the customs Act 1962 allows the goods to be released on Redemption fine and penalty even when confiscation is authorized.

5.2 The Applicant further pleaded that as per 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 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 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 07.03.2018, 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 observed that the Applicant had gold was ingeniously concealed in the in the cilindrical door lock. It was an attempt made with the intention to hoodwink the customs authorities. The concealment of the gold was deliberately planned to avoid detection and to dodge the Customs Officer and smuggle out the same without payment of appropriate duty. This ingenious concealment clearly indicates mensrea, and that there was no intention of declaring the gold to the authorities and if it was not intercepted, the gold would not suffer payment of customs duty. There is no doubt about the fact that the provisions of Customs Act, 1962 has been contravened and therefore, the seized gold is liable for absolute confiscation. In view of the above mentioned observations the Government is inclined to agree with the Order in Appeal and holds that the impugned gold has been rightly confiscated absolutely so as to deter such passengers from such activities in the future. Hence the Revision Application is liable to be rejected.

8. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order 252/2016 dated 28.06.2016 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

9. Revision Application is dismissed.

10. So, ordered.

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

ORDER No.383/2018-CUS (SZ) /ASRA/Mumbai DATED 01.06.2018

To,

Shri Kaliyappan
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, 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.

Attested

SANKARSAN MUNDA
Asstt. Commissioner of Customs & C. Ex.