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SPEED POST

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

F.No. 373/05/B/16-RA / 342

Date of Issue 11/07/2018

ORDER NO. 401/2018-CUS (SZ)/ASRA/MUMBAI DATED 06.06.2018 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 Narayanaswamy Kumar

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus-I No. 370/2015 dated 30.06.2015 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Narayanaswamy Kumar (herein referred to as Applicant) against the order 370/2015 dated 30.06.2015 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted the applicant at the Chennai International Airport on 18.01.2015. The Applicant had not declared the goods and had opted for the green channel. Examination of his baggage and person resulted in recovery of two gold bars, wrapped in a handkerchief and kept in his hand bag, weighing 200 grams valued at Rs. 4,99,646/- ( Rupees Four Lakhs Ninety Nine thousand Six hundred and forty six).

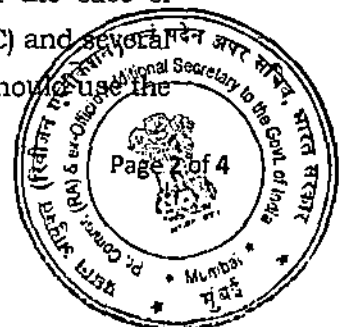
3. The Original Adjudicating Authority, vide order No. 39/15-16 AIRPORT dated 25.04.2015 confiscated the gold mentioned above under section 111(d),(l) & (m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992, and allowed redemption of the gold on payment of Rs. 2,00,000/-. A Personal penalty of Rs. 50,000/- was imposed under Section 112 (a) 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) Chennai, set aside the order in Original and ordered absolute confiscation of the gold.

5. Aggrieved with the above order 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 not applied his mind and glossed over the judgments and points raised in the Appeal grounds; The gold was declared by the Applicant, but the officers did not accept his declaration and made him rewrite the same; There are no allegations that he tried to exit the green channel; He was all along at the Red channel under the control of the officers; The only allegation is that he did not declare the gold; Goods must be prohibited before import simply because the goods are not declared it cannot become prohibited; He is the owner of the gold and has purchased it for his family.

5.2 The Applicant further pleaded that 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 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;

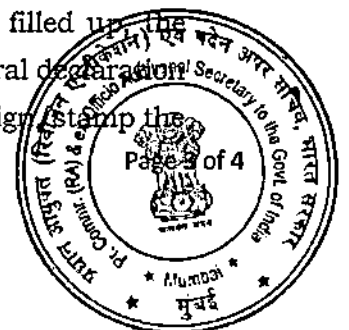
5.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing re-export, and prayed for allowing re-export and reduction of the redemption fine and reduce personal penalty and thus render justice.

6. A personal hearing in the case was held on 19.04.2018, the Advocate for the respondent Shri Palanikumar attended the hearing. At first he pleaded that the delay in filing the Revision Application by 43 days may be condoned as the adjudication order was misplaced by the Applicant inadvertently. 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.

7. The Government has gone through the facts of the case. In the interest of justice, delay of 32 days is condoned and revision application is decided on merits. The goods were not declared by the passenger as required under Section 77 of the Customs Act, 1962. Under the circumstances confiscation of the goods is justified.

8. However, the facts of the case reveal that the Applicant was intercepted even before, he exited the Green Channel. There was no concerted attempt at smuggling these goods into India. The Applicant does not have any previous offences registered against him. Government, also observes that the gold was wrapped in a handkerchief and kept in the hand bag, there is no allegation of ingenious concealment. Further, The order in Appeal main contention is that the Applicant has stated that he is only a carrier. However, the gold is claimed by the Applicant and there is no other claimant. There are a catena 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, and the section does not make any distinction between the owner and carrier. Gold is restricted and not prohibited as per Foreign Trade Policy.

9. Further, 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 and stamp the



same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant. The absolute confiscation ordered in the impugned Order in Appeal is therefore harsh and needs to be set aside.

10. Taking into consideration the foregoing discussion, Government sets aside the impugned Order in Appeal No. C. Cus-I No. 370/2015 dated 30.06.2015. The Order in Original is upheld. Revision application is allowed on above terms.

11. So, ordered.

*(Handwritten Signature)*  
06/06/18

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

ORDER No. 401/2018-CUS (SZ) /ASRA/MUMBAI

DATED 06.06.2018

To,

Shri Narayanaswamy Kumar

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

Copy to:

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

**Attested**

*(Handwritten Signature)*

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

