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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. 373/239/B/16-RA

Date of Issue 11/07/2018

ORDER NO. 405/2018-CUS (SZ)/ASRA/MUMBAI DATED 07.06.2018 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 Mohamed Althaf

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 332/2016 dated 28.10.2016 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Mohamed Althaf (herein referred to as Applicant) against the order 332/2016 dated 28.10.2016 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted the applicant, A Sri Lankan national, at the Chennai International Airport on 31.08.2016. The Applicant had not declared the goods and had opted for the green channel. Examination of his person resulted in recovery of two gold bits totally weighing 53 grams valued at Rs. 1,57,993/- (Rupees One Lakh Fifty seven thousand Nine hundred and Ninety three). The gold bits were concealed in his underwear.

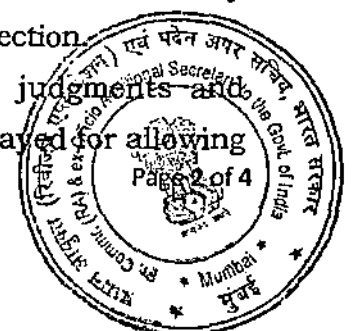
3. The Original Adjudicating Authority, vide order No. 599/2016 Batch B dated 31.08.2016 absolutely confiscated the gold mentioned above under section 111(l) & (m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A Personal penalty of Rs. 16,000/- 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, vide his order No. 332/2016 dated 28.10.2016 rejected the Appeal.

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 ownership of the gold is not disputed and there is no ingenious concealment; Goods must be prohibited before import or export, simply because the goods were not declared goods cannot become prohibited after import.; Section 125 allows the redemption of goods even when confiscation is authorized, the adjudication authority has failed to exercise the discretionary power under the section.

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.

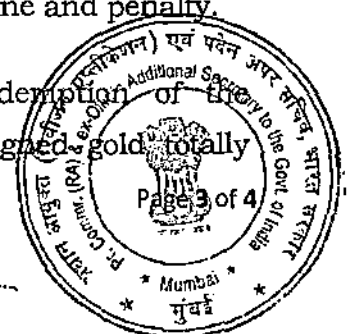
6. A personal hearing in the case was held on 19.04.2018, the Advocate for the respondent Shri Palanikumar attended the hearing. He re-iterated the submissions filed in Revision Application and submitted that the revision application be decided on merits. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. 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 Applicant does not have any previous offences registered against him. The gold is claimed by the Applicant and there is no other claimant. Government, also observes that there is no allegation of ingenious concealment and therefore there was no concerted attempt at smuggling these goods into India. 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/stamp the same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant, more so because he is a foreign national. The absolute confiscation is therefore unjustified.

9. Further, 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. 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 gold in the impugned Order in Appeal therefore needs to be modified and the confiscated goods are liable to be allowed for re-export on payment of redemption fine and penalty.

10. In view of the above, Government allows redemption of the confiscated goods for re-export in lieu of fine. The impugned gold is totally



weighing 53 grams valued at Rs. 1,57,993/- (Rupees One Lakh Fifty seven thousand Nine hundred and Ninety three) is ordered to be redeemed for re-export on payment of redemption fine of Rs.55,000/- (Rupees Fifty Five thousand) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 16,000/- (Rupees Sixteen thousand) to Rs.11,000/- (Rupees Eleven Thousand) under section 112(a) of the Customs Act,1962.

11. The impugned Order in Appeal stands modified to that extent. Revision application is partly allowed on above terms.

12. So, ordered.

(Signature)
7614

(ASHOK KUMAR MEHTA)

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

ORDER No *405*/2018-CUS (SZ) /ASRA/MUMBAI

DATED 07.06.2018

To,

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

Attested

(Signature)
11/2/18

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

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.

