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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. 373/35/B/16-RA

Date of Issue 13/07/2018

ORDER NO. 415/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 08.06.2018 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 Meeran Mohideen

Respondent: Commissioner of Customs(Airport), Trichy

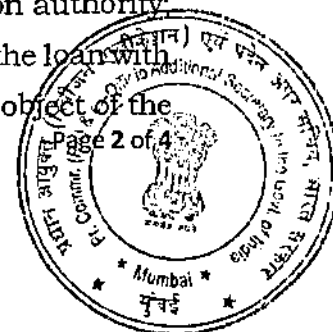
Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus No. TCP-CUS-000-APP-047-15 dated 14.12.2015 passed by the Commissioner of Customs (Appeals) Trichy.



ORDER

This revision application has been filed by Shri Meeran Mohideen (herein after referred to as the Applicant) against the order no C. Cus No. TCP-CUS-000-APP-047-15 dated 14.12.2015 passed by the Commissioner of Customs (Appeals), Trichy.

2. Briefly stated the facts of the case is that the applicant arrived at the Trichy Airport on 15.06.2015. Examination of his baggage and person resulted in the recovery of two gold bits weighing 79.8 gms valued at Rs. 1,98,931/- (Rupees One lakh Ninety eight thousand Nine hundred and Thirty one). The gold bits were recovered from his shirt pockets.
3. The Original Adjudicating Authority vide Order-In-Original No. 222/2015 Batch A dated 15.06.2015 ordered 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, but allowed redemption of the gold on payment of Rs. 50,000/- as fine and imposed penalty of Rs. 20,000/- 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. TCP-CUS-000-APP-047-15 dated 14.12.2015 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; he did not admittedly pass through the green channel, He was all along at the red channel under the control of the officers; There are also no specific allegations that he has tried to cross the green channel , the only allegation is that he did not declare the gold; Section 125 of the Customs Act 1962 authorises the release of the gold on redemption fine and penalty even when confiscation is authorized by the adjudication authority. He had borrowed money to purchase the gold and has to return the loan with interest; The Hon'ble Supreme Court has stated that the main object of the



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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 his case and prayed for reduction of 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 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 was not intercepted while trying to exit the Green Channel. There was no concerted attempt at smuggling these goods into India. The Applicant is a frequent traveler but does not have any previous offences registered against him. Government, also observes that there is no allegation of ingenious concealment and the Applicant had worn the gold. 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 ~~Authority~~ 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. 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 reduction of redemption fine and reduced personal penalty and the Government is inclined to accept the plea.



impugned Order in Appeal therefore needs to be modified and the confiscated goods are liable to be allowed on reduced redemption fine and penalty.

10. In view of the above, Government reduces the redemption fine on the confiscated goods weighing 79.8 gms valued at Rs. 1,98,931/- (Rupees One lakh Ninety eight thousand Nine hundred and Thirty one) from Rs. 50,000/- (Rupees Fifty thousand ) to Rs. 40,000/- ( Rupees Forty 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. 20,000/- (Rupees Twenty thousand ) to Rs. 10,000/- ( Rupees Ten 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.

*Ashok Kumar Mehta*  
8/6/18

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

ORDER No. 415/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 08.06.2018

To,

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

**ATTESTED**

*Sankarsan Munda*  
13/5/18  
**SANKARSAN MUNDA**  
Asstt. Commissioner of Customs & C. Ex.

Copy to:

1. The Commissioner of Customs, Anna International Airport, Trichy.
2. The Commissioner of Customs (Appeals), Custom House, Trichy.
3. Sf. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

