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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
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Mumbai-400 005

F.No. 373/22/B/16-RA / 50

Date of Issue 13/07/2018

ORDER NO. 416/2018-CUS (SZ)/ASRA/MUMBAI DATED 12.06.2018 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 Farook

Respondent : Commissioner of Customs, Chennai.

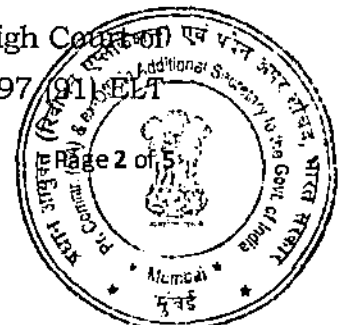
Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 870/2015 dated 23.12.2015 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Farook (herein after referred to as the Applicant) against the order no C. Cus No. 870/2015 dated 23.12.2015 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case is that the applicant arrived at the Chennai International Airport on 02.10.2015. Examination of his baggage resulted in the recovery of 1800 Black Cigarettes, 27 nos Face powders, 460 Scarves one Sony home theatre, and one gold chain and ring concealed in his undergarments weighing 120 gms valued at Rs. 2,92,118/- (Rupees Two lakh Ninety two thousand One hundred and Eighteen).
3. The Original Adjudicating Authority vide Order-In-Original No. 1080/2015 Batch C dated 02.10.2015 allowed the Sony Home theatre on free allowance, allowed redemption of the Face powders and Scarves on payment of redemption fine of Rs. 11,900/- and ordered absolute confiscation of the impugned gold and cigarettes 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. 31,500/- 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. 870/2015 dated 23.12.2015 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 is the owner of the gold and there are also no specific allegations that he has tried to cross the green channel or that he did not declare the gold; he did not admittedly pass through the green channel, He was all along at the red channel under the control of the officers; gold is not a prohibited item and according to liberalized policy can be released on redemption fine and applicable duty;
  - 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 (1) 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.

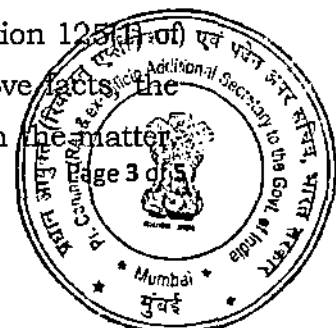
5.3 The Revision Applicant cited various assorted judgments in support of his case and prayed for reduction of redemption fine and reduced personal penalty.

6. A personal hearing in the case was held on 19.04.2018, the Advocate for the respondent Shri Palanikumar 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 gold was 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 Government, also observes that there is no ingenious concealment and the Applicant claims to have worn the gold. The rest of the goods have been allowed on redemption fine and penalty. 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.

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 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 on redemption fine and reduced personal penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified and the confiscated goods are liable to be allowed for re-export on redemption fine and penalty.

10. In view of the above, Government allows redemption of the confiscated gold bits for re-export in lieu of fine. The gold bits weighing 120 gms valued at Rs. 2,92,118/- (Rupees Two lakh Ninety two thousand One hundred and Eighteen) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 1,25,000/- (Rupees One Lakh Twenty 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. 31,500/- (Rupees Thirty one thousand Five hundred) to Rs. 25,000/- (Rupees Twenty Five 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*  
12/6/18

(ASHOK KUMAR MEHTA)

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

ORDER No. 416/2018-CUS (SZ) /ASRA/MUMBAI

DATED 12.06.2018

To,

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

**ATTESTED**

*Sankarsan Munda*  
12/6/18  
**SANKARSAN MUNDA**  
Asstt. Commissioner of Custom & C. Ex.

Copy to:

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

