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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. 373/108 /B/13-RA/1135 Date of Issue 13.02.2018

ORDER NO. 44/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 12.02.2018 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 Basheer

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 1286/2013 dated 19.09.2013 passed by the Commissioner of Customs (Appeals), Chennai.

ORDER

This revision application has been filed by Shri. Mohamed Basheer (herein referred to as Applicant) against the order no 1286/2013 dated 19.09.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the Applicant, arrived at the Chennai Airport on 23.09.2012. Examination of his baggage resulted in the recovery of 4 nos, silver coloured gold coins totally weighing 48 gms valued at Rs. 1,37,388/- concealed in baggage along with personal items. The Original adjudicating Authority vide Order-In-Original No. 203/Batch A dated 19.02.2013 ordered absolute confiscation of the impugned goods under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 10,000/- under Section 112 (a) of the Customs Act, 1962.

3. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus No. 1286/2013 dated 19.09.2013 rejected the appeal of the applicant.

4. The applicant has filed this Revision Application interalia on the following grounds that;

4.1. he did not pass through the green channel. He was all along at the red channel under the control of the Customs Officers. He was at the scan area at the arrival hall of Airport, when he was intercepted by the Customs officers and when asked, he informed the officers of the gold coins chains.

4.2 the seized gold coins were not brought for commercial purposes.

4.3. the gold coins not concealed in any manner.

4.4 he requested the officers to allow him to take back the gold coins when leaving India which was not considered.

4.5. Even assuming without admitting he had not declared the gold before the officers it is a technical fault and is pardonable. Secondly, CBEC Circular 09/2001 gives specific directions to the Customs officer that the declaration should not be blank, if not filled in by the passenger the officer will help them to fill the declaration card.

4.6 sections 111 (d) (l) (m) and (o) are not attracted as no offence was committed. Moreover the personal penalty imposed was very high and unreasonable.

4.7 the absolute confiscation of the gold was unreasonable and personal penalty imposed was high and unreasonable .

The Revision Applicant also cited various assorted judgments in support of his case, and prayed for permission to re-export the gold jewelry without payment of redemption fine and or reduce the personal penalty.

5. A personal hearing in the case was held on 04.12.2017, the Advocate for the respondent Shri Palanikumar requested for an adjournment due to a medical emergency. The personal hearing was rescheduled on 29.01.2018, which was attended by the Shri Palanikumar. The Advocate, re-iterated the submissions filed 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.

6. The Government has gone through the case records it is seen the gold coins was not declared by the passenger as required under Section 77 of the Customs Act, 1962. Further, the applicant had coated the coins in silver colour, thus there was an attempt to evade the payment of Customs duty. Under the circumstances confiscation of the gold is justified.

7. However, the goods were not in commercial quantity and from the facts of the case it appears that gold coins were not indigenously concealed. With regards to the declaration, the CBEC Circular 09/2001 gives specific directions to the Customs officer as follows, *"It may be ensured that every passenger reporting at Red Channel fill up a Disembarkation Card clearly mentioning therein the quantity and value of goods that he has brought, and hand over the Customs portion of the card to the officer on duty at the red Channel. In case the same is incomplete/not filled up, the proper Customs officer should help record the O.D of the passenger 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. Considering all factors, the Government is of the opinion that the absolute confiscation of the impugned gold is harsh and not justified.

8. As the applicant has pleaded for re-export of the confiscated gold, Government is inclined to accept the plea. In view of the above mentioned observations, the Government also finds that a lenient view can be taken while imposing redemption fine and penalty upon

the applicant. 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. The order absolute confiscation of the gold jewelry in the impugned Order in Appeal therefore needs to be modified, the confiscated gold chains are liable to be allowed for re-export on payment of redemption fine.

9. Taking into consideration the foregoing discussion, Government modifies the order of absolute confiscation of the impugned gold. Government allows redemption of the confiscated gold coins for re-export in lieu of fine. The confiscation of the gold jewelry totally weighing 48 gms, valued at Rs. 1,37,388/-(Rupees One lac, thirty seven thousand three hundred and eighty eight) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 35,000/-(Rupees Thirty Five thousand) under section 125 of the Customs Act, 1962. Government also observes that facts of the case justify slight reduction in penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 10,000/- (Rupees Ten thousand) to Rs. 5,000/- (Rupees Five thousand) under section 112(a) of the Customs Act,1962.

10. The impugned Order in Appeal 1268/2013 dated 19.09.2013 is modified as detailed above. Revision Application is partly allowed.

11. So, ordered.

12.2.18

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

ORDER No.44/2018-CUS (SZ) /ASRA/MUMBAI DATED 12.02.2018

To,

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

True Copy Attested

13.2.18

एस. आर. हिरूलकर
S. R. HIRULKAR
(A-C)

Copy to:

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