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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. 373/27/B/17-RA/981 Date of Issue 18/07/2018

ORDER NO.444/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 21 .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 Nagoor Mohideen Mohammed Ismail

Respondent : Commissioner of Customs(Airport), Chennai

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus No. 30/2017 dated 09.02.2017 passed by the Commissioner of Customs (Appeals) Chennai.

ORDER

This revision application has been filed by Shri Nagoor Mohideen Mohammed Ismail (herein after referred to as the Applicant) against the order C. Cus No. 30/2017 dated 09.02.2017 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case is that the applicant arrived at the Chennai Airport on 08.11.2016. Examination of his person resulted in the recovery of two gold bits concealed in his undergarments weighing 59 grams valued at Rs. 1,65,120/- (Rupees One lakh Sixty five thousand and One hundred and Twenty).

3. The Original Adjudicating Authority vide Order-In-Original No. 862/2016 Batch D dated 08.11.2016 ordered absolute 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, and imposed penalty of Rs. 17,000/- 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. 30/2017 dated 09.02.2017 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; gold is not an prohibited item and can be released on payment of redemption fine and duty; Ownership of the gold is not disputed and there is no ingenious concealment; It is routinely stated that the gold is concealed in the undergarments; The option available under section 125 of the Customs Act is not exercised; Section 125 of the Customs Act does not distinguish between the owner or carrier of the goods; The order one way states that the passenger has not declared the gold and on the other hand states that Applicant is not the owner of the gold, even assuming without admitting the Applicant is not the owner then the question of declaration does not arise, as only the owner can file a declaration;

5.2 The Applicant further pleaded that as per the Applicant further pleaded that as per the judgement by CEGAT South Zonal Bench , Chennai in the case of Shaikh Shahabuddin vs Commissioner of Customs Chennai has held that absolute confiscation without giving the option of redemption for gold concealed in shaving cream tubes is not proper, and the case was remanded for denovo adjudication;

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 (91) 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

5.3 The Revision Applicant cited various assorted judgments in support of his case and prayed for re-export of the gold on redemption fine and 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 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 is also no allegation of the Applicant trying to pass through the green channel. The ownership of the gold is not disputed. Government, also observes that the gold was kept in his undergarments and not ingeniously concealed. The Applicant is a frequent traveler, and yet there are no previous offences registered against him. 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. 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 on redemption fine and reduced personal penalty and the Government is inclined to accept the plea. The absolute confiscation in 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 59 grams valued at Rs. 1,65,120/- (Rupees One lakh Sixty five thousand and One hundred and Twenty) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 60,000/- (Rupees Sixty 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. 17,000/- (Rupees Seventeen thousand) to Rs. 12,000/ (Rupees Twelve 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.

21.6.18

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

ORDER No. 444/2018-CUS (SZ) /ASRA/ Mumbai DATED 21-06.2018

To,

Shri Nagoor Mohideen Mohammed Ismail
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai 600 001.

Copy to:

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

Attested

18/7/18

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