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SPEED POST

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

F.No. 373/200/B/16-RA

Date of Issue 19/07/2018

ORDER NO. 455/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 25.06.2018 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 M. Shahul Hameed

Respondent : Commissioner of Customs(Airport), Trichy.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No.158/2016-TRY(CUS) dated 17.08.2016 passed by the Commissioner of C. Ex. (Appeals II) Trichy.



ORDER

This revision application has been filed by Shri M. Shahul Hameed (herein after referred to as the Applicant) against the order No. No.158/2016-TRY(CUS) dated 17.08.2016 passed by the Commissioner of C. Ex. (Appeals II) Trichy.

2. Briefly stated the facts of the case is that on 12.02.2015 the officers of Customs intercepted the Applicant who was crossing the Green Channel with one Samsung 40" TV, the TV was connected and switched on, as no sound was emanating from the speakers. Dismantling of the speakers led to the recovery of two small cylindrical gold pieces totally weighing 117.400 grams valued at Rs. 3,23,319/- ( Rupees Three lakhs Twenty three thousand Three hundred and Nineteen).

3. The Original Adjudicating Authority vide Order-In-Original No. 582/2015 dated 10.12.2015 ordered for 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. 60,000/- 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. 158/2016-TRY(CUS) dated 17.08.2016 rejected the appeal of the applicant.

5. The applicant has filed this Revision Application inter alia 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 was approached by a person in Singapore to carry the TV to India and paid him Rs. 5,000/- for the same. Not being aware of the concealed gold he accepted to carry the TV; he had stated that he disowns the gold, the adjudicating Authority in spite of noting that no one has come to claim the gold, goes on to discuss the option of releasing the gold under section 125 of the Customs Act; The Applicant has also claimed that though the Show Cause Notice has relied upon several documents, no documents were provided to him; The personal penalty of Rs. 60,000/- is very high and unreasonable.

5.3 The Revision prayed for setting aside the impugned order and set aside the 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 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 case records, it is observed that the Applicant is a frequent traveler. From 13.02.2014 to 12.02.2015 he has made 12 trips abroad. Being a frequent traveler it is implausible that he is as innocent as he claims to be. Government is not at all convinced that a person making so many trips abroad in a year would agree to carry luggage for a paltry Rs. 5,000/-. However, the gold has not been claimed by the Applicant. The gold been confiscated absolutely by the Adjudicating Authority and the same has been upheld by the Order in Appeal. The facts of the case also reveal that the impugned TV with the concealed gold was given to the Applicant by some other person in Singapore therefore indicating that the Applicant may not be an active participant in the offence. The Applicant has pleaded for setting aside the impugned order and setting aside the personal penalty. However, as no one has claimed the gold, and the Applicant has also has disowned the gold, Government is of the opinion that a lenient view can be taken in the matter. Further, the penalty imposed is high and unjustified. The Applicant has pleaded for reduction of penalty and the government is inclined to take accept the plea. The Order in Appeal therefore needs to be modified.

7. In view of the above, The penalty imposed on the Applicant is reduced from Rs. 60,000/- (Rupees Sixty thousand) to Rs. 40,000/- ( Rupees Forty thousand) under section 112(a) of the Customs Act,1962.

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

9. So, ordered.

*Ashok Kumar Mehta*  
25616

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

ORDER No. <sup>455</sup>/2018-CUS (SZ) /ASRA/MUMBAI. DATED 25.06.2018

To,

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

Copy to:

1. The Commissioner of Customs, 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.



Attested

*Sankarsan Munda*  
19/7/18  
**SANKARSAN MUNDA**  
Asst. Commissioner of Custom & C. Ex.