



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/150/B/15-RA / 30

Date of Issue 23/07/2018

ORDER NO. 472/2018-CUS (SZ)/ASRA/MUMBAI DATED 28.05.2018 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. Abdul Lattif Mohamed Kassime

Respondent : Commissioner of Customs, Chennai

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus No. 83/2015 dated 27.02.2015 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Abdul Lattif Mohamed Kassime (herein referred to as Applicant) against the order C. Cus-I. no 83/2015 dated 27.02.2015 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Applicant was intercepted at the Chennai International Airport on 31.01.2011 while passing through the Green Channel. Examination of his baggage resulted in recovery of 689.5 grams of gold jewelry valued at Rs. 17,89,253/- (Rupees Seventeen Lakhs eighty Nine thousand two hundred and fifty three), One GRAHAM chronometer GMT watch valued at Rs 4,09,100/- (Rupees Four Lakhs Nine thousand one hundred) and 60 nos. "Martin" shirts valued at Rs. 9000/- (Rupees Nine thousand only). The Applicant was arrested and subsequently released on bail.

3. The Original Adjudicating Authority, vide order No. 22/2012-JC (Air) dated 25.08.2012 absolutely confiscated the items mentioned above under section 111(d),(l) & (m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A Personal penalty of Rs. 2,30,000/- was also imposed under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals) Chennai, vide his order C.Cus No. 750/2013 Cus dated 24.05.2013 allowed the goods on payment of Redemption fine of Rs. 4,50,000/- and reduced the penalty to Rs. 50,000/- and modified the order in original. Aggrieved by this order the department preferred a Revision Application before Joint Secretary (RA), New Delhi who remanded the case back to Commissioner (Appeals) for fresh consideration. The Commissioner of Customs (Appeals) Chennai, vide his order C.Cus No. 83/2015 dated 27.02.2015 upheld the order in Original and dismissed the Appeal filed by the Applicant.

5. Aggrieved with the above order the Applicant has filed this revision application interalia on the 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 not applied his mind and glossed over the judgments and points raised in the Appeal grounds; The averments of the adjudicating Authority that he received the gold from his friend is not based on evidence and amounts to extraneous consideration; he has retracted his statements given earlier; The department had assessed the goods on the higher side; The Hon'ble Supreme Court in the case of M/s. Aggarwal Distributors (P) Ltd. Vs Commissioner of Customs New Delhi reported in 2000(117)



2

ELT 49 (Tribunal) has categorically stated that " Documents displayed on internet, being unsigned are not reliable and cannot be relied upon to calculate value".

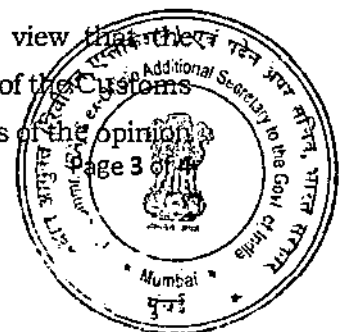
5.2 The Applicant further pleaded that The Hon'ble High Court of Andhra Pradesh in the case of Sheikh Jamal Basha vs GOI 1997 (91) ELT 277 (AP) has stated held that under section 125 of the Act is Mandatory duty to give option to the person found guilty to pay fine in lieu of confiscation; The Apex court 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; 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 and boards policies in support of allowing re-export, and prayed for allowing re-export and reduction of the redemption fine and reduce 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 attended the hearing. He re-iterated the submissions filed in Revision Application and submitted that the revision application be decided on merits. 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. However, the Applicant was intercepted before he crossed the Green Channel. There was no concerted attempt at smuggling these goods into India. The Applicant is not a frequent traveller and does not have any previous offences registered against him. Government, also observes that there is no allegation of ingenious concealment. The only reason for absolute confiscation of the goods is that the goods were not declared and under the circumstances absolute confiscation of the goods is unjustified. 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. The absolute confiscation is therefore unjustified.

8. 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 the option available under section 125 of the Customs Act, 1962 has to be exercised and the option to redeem the gold on payment of redemption fine and penalty should be extended. In view of the above the Government allows redemption of the goods worth Rs. 22,07,353/- (Rupees Twenty Two Lakhs Seven thousand, three hundred and Fifty three) on payment of redemption fine of Rs.10,00,000/- (Rupees Ten lakhs) Government also observes that the facts of the case justify slight reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 2,30,000/- /-(Rupees Two lakhs thirty thousand) to Rs 2,00,000/- (Rupees Two lakhs) under section 112(a) of the Customs Act, 1962.

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

9. So, ordered.

(Handwritten Signature)
28.5.18

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

ORDER No. ⁴⁷² /2018-CUS (SZ) /ASRA/Mumbai

DATED 28-05-2018

To,

Shri Abdul Lattif Mohamed Kassime
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, Chennai
2. The Commissioner of Customs (Appeals) Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

ATTESTED

(Handwritten Signature)
27/7/18

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

