



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

F.No. 371/10/B/15-RA / 20

Date of Issue 23/07/2018

ORDER NO. 473/2018-CUS (WZ) / ASRA / MUMBAI/ DATED 28.06.2018 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 Shakir Ali

Respondent: Commissioner of Customs(Airport), Mumbai

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-617/2014-15 dated 31.12.2014 passed by the Commissioner of Customs (Appeals) Mumbai Customs, Zone-III.



ORDER

This revision application has been filed by Shri Shakir Ali (herein after referred to as the Applicant) against the order No. MUM-CUSTOM-PAX-APP-617/2014-15 dated 31.12.2014 passed by the Commissioner of Customs (Appeals) Mumbai Customs, Zone-III.

2. Briefly stated the facts of the case is that the applicant, arrived at the Chhatrapati Shivaji International Airport on 31.08.2014. Examination of his baggage and person resulted in the recovery of one gold bar weighing 177 grams valued at Rs. 4,55,332/- (Four lakhs Fifty five thousand Three hundred and thirty two).

3. The Original Adjudicating Authority vide Order-In-Original No. Aircus/49/M-2/9148/14 dated 31.08.2014 ordered absolute confiscation of the impugned gold under Section 111 (d), (i) (l) and (m) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, and imposed penalty of Rs. 1,00,000/- 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. MUM-CUSTOM-PAX-APP-617/2014-15 dated 31.12.2014 rejected the appeal of the applicant.

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

5.1. The applicant has brought gold for the first time; He was intercepted before he could declare the gold and before he could decide whether to go to the green or red channel; the gold has been brought for his daughters marriage and not for monetary consideration or sale; As he did not get an opportunity to declare the gold there is no question of violation of section 77 of the Customs Act,1962; The gold was not concealed ingeniously.

5.2 The Applicant further pleads that the impugned order may be set aside and release the gold bar and substantially reduce the personal penalty.



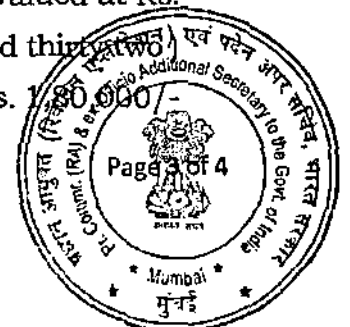
6. A personal hearing in the case was held on 15.02.2018, the Advocate for the respondent Shri Satish Kumar Dubey re-iterated the submissions filed in Revision Application and pleaded that the Order in Appeal be set aside and gold be released on redemption fine and penalty.

7. The Government has gone through the facts of the case. The goods were not properly 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 intercepted before he passed the Green Channel. There is also no allegation that the Applicant was trying to pass through the green channel. The ownership of the gold is not disputed. The gold was recovered from his baggage and it was not ingeniously concealed. There are also no allegations that the gold was concealed. 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 release of the gold on payment of 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 on redemption fine and penalty.

10. In view of the above, Government allows redemption of the confiscated gold in lieu of fine. The gold weighing 177 grams valued at Rs. 4,55,332/- (Four lakhs Fifty five thousand Three hundred and thirty two) is ordered to be redeemed for payment of redemption fine of Rs. 1,80,000/-



(Rupees One lakh Eighty 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. 1,00,000/- (Rupees One lakh) to Rs. 40,000/- (Rupees Forty 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
24.6.2018

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

ORDER No. ^{A73}/2018-CUS (WZ) /ASRA/MUMBAI

DATED 23-06-2018

To,

Shri Shakir Ali
C/o Satish Kumar Dubey
Room No. 4A, 1st Floor,
105 Dhanji Street,
Zaveri Bazaar,
Mumbai-400 003.

Copy to:

1. The Commissioner of Customs, Airport, C.S.I. Airport, Mumbai.
2. The Commissioner of Customs (Appeals), Mumbai Customs, Zone-III.
3. Sr. P.S. to AS (RA), Mumbai.
- ✓ 4. Guard File.
5. Spare Copy.

ATTESTED

S.R. Hirulkar
23.7.18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

