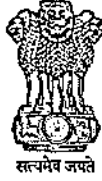


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F.No. 373/416/B/14-RA | 117

Date of Issue 30/07/2018

ORDER NO. 510/2018-CUS (SZ)/ASRA/MUMBAI DATED 17.07.2018 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 Khader Valli

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. 1710/2014 dated 22.09.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Khader Valli (herein referred to as Applicant) against the order 1710/2014 dated 22.09.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted the applicant, at the Chennai International Airport on 26.06.2014. Examination of his person resulted in recovery of a gold biscuit weighing 200 grams valued at Rs. 4,96,899/- (Rupees Four lakhs Ninety Six thousand Eight hundred and Ninety nine).

3. The Original Adjudicating Authority, vide order No. 803/2014- Batch B dated 26.06.2014 absolutely confiscated the gold 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. 50,000/- was 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, Commissioner of Customs (Appeals) Chennai, vide his order No. 1710/2014 dated 22.09.2014, rejected the Appeal of 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 Applicant has come to India after staying abroad continuously for more than 636 days and therefore is eligible to bring gold upto 1 kg. The gold was purchased through his hard earned money;The allegation of non-declaration is not true and the gold was declared by the Applicant before reaching the customs table; the customs officers did not hear his plea and blindly alleged that he was trying to smuggle the gold; The absolute confiscation of the gold is severe and harsh and the personal penalty of Rs. 50,000/- is also severe and harsh.

5.2 The Revision Applicant pleaded for setting aside the order of absolute confiscation and prayed for allowing re-export and reduction of the personal penalty and thus render justice.



6. A personal hearing in the case was held on 06.07.2018, 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. A written declaration of gold was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the gold is justified.

8. The Government has gone through the case records it is observed that the adjudication order states that the Applicant was intercepted when he was crossing the metal detector. Therefore the applicant did not cross the green channel and was intercepted before he attempted the same. The ownership of the gold is not disputed. There is no allegation of indigenous concealment. Absolute confiscation in such instances appears to be a harsh option, and unjustifiable. 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.

05.11.2018

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. The Applicant has pleaded for release of the gold for re-export on redemption fine and reduced penalty and the Government is inclined to accept the request. The impugned Order in Appeal therefore needs to be modified and the currency is liable to be allowed on payment of redemption fine and penalty.

10. In view of the above, Government allows redemption of the confiscated gold for re-export in lieu of fine. The impugned gold biscuit 200 grams valued at Rs. 30000/-



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4,96,899/- (Rupees Four lakhs Ninety Six thousand Eight hundred and Ninety nine) is ordered to be redeemed on payment of redemption fine of Rs. 2,00,000/- (Rupees Two lakhs) 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. 50,000/- (Rupees Fifty thousand) to Rs. 40,000/- (Rupees Forty Thousand) under section 112(a) of the Customs Act,1962.

9. The impugned Order in Appeal is modified as detailed above. Revision application is partly allowed on above terms.

10. So, ordered.

Ashok Kumar Mehta
17.7.18

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

ORDER No. 510/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 17.07.2018

To,

Shri Khader Valli
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

Sankarsan Munda
20/7/18

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

