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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. 373/71/B/17-RA | 139

Date of Issue 31/07/2018

ORDER NO. ⁵²³2018-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 Sivasankar

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. 69/2017 dated 04.04.2017 passed by the Commissioner of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by Shri Sivasankar (herein referred to as Applicant) against the order 69/2017 dated 04.04.2017 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted the applicant, at the Chennai International Airport on 30.09.2016. Examination of his person resulted in recovery of assorted gold jewelry concealed in his undergarments and in a neck pillow kept in his stroller bag totally weighing 467.3 grams valued at Rs. 13,84,610/- (Rupees Thirteen lakhs Eighty four thousand Six hundred and Ten).

3. The Original Adjudicating Authority, vide order No. 250/2016-17 dated 30.01.2017 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. 1,35,000/- was imposed under Section 112 (a) of the Customs Act,1962, A penalty of Rs. 5,000/-was also imposed under Section 114AA 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. 69/2017 dated 04.04.2017, set aside the penalty of Rs. 5000/- Imposed under section 114AA of the Customs Act,1962 and rejected the rest of 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 Appellate Authority has not applied his mind and glossed over the judgments and points raised in the Appeal grounds; The Applicant is not a frequent traveler and the gold was purchased from his own earnings; the quantity of gold concealed in the neck pillow has not been quantified and therefore the the contention that the gold was concealed in the neck pillow is incorrect; the difference of complete prohibition and restrictions is not appreciated by the adjudication authority; The adjudicating authority has not exercised the



option available under section 125 of the Customs Act,1962; The adjudication authority order stating that the gold was received from unknown persons is amounting to extraneous consideration; 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; The Applicant further pleaded that 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;

5.2 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 case records it is observed that the Applicant had ingeniously concealed the gold jewelry in a neck pillow and in his undergarments. The concealment was planned so as to avoid detection and evade Customs duty and smuggle the gold into India. The aspect of allowing the gold for re-export can be considered when imports have been made in a legal manner. This is not a simple case of mis-declaration. In this case the Applicant has blatantly tried to smuggle the gold into India in contravention of the provisions of the Customs, 1962. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and that the Applicant had no intention of declaring the gold to the authorities and if he was not intercepted before the exit, the Applicant would have taken out the gold pieces without payment of custom duty.



8. The above acts have therefore rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed a penalty of Rs. 1,35,000/-. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.

9. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order 69/2017 dated 04.04.2017 passed by the Commissioner of Customs (Appeals-I), Chennai, is upheld as legal and proper.

10. Revision Application is dismissed.

11. So, ordered.

Ashok Kumar Mehta
17.7.18

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

ORDER No. 523/2018-CUS (SZ) /ASRA/MUMBAT.

DATED 17.07.2018

To,

Shri Sivasankar
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High Court, 2nd Floor,
Chennai - 600 001.

ATTESTED

Sankarsan Munda
17/7/18
SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

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.

