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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. 373/139/B/13-RA

Date of Issue 01/08/2018

ORDER NO. 528/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 20.07.2018 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 Muhammed Habib Bin Shaik Allavudeen
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-I No. 1608 & 1609/2013 dated 20.11.2013 passed by the Commissioner of Customs (Appeals), Chennai.



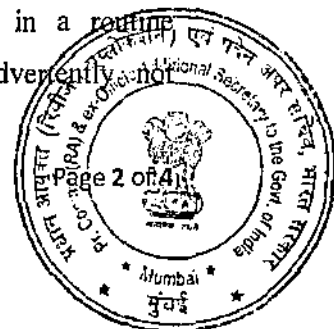
ORDER

This revision application has been filed by Shri Muhammed Habib Bin Shaik Allavudeen (herein referred to as Applicant) against the order no 1608 & 1609/2013 dated 20.11.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, a Singaporean citizen arrived at the Chennai Airport on 13.03.2012. He was intercepted and found in possession of a gold jewelry totally weighing 407 gms valued at Rs. 10,68,782/- (Rupees Ten lakhs Sixty Eight thousand Seven hundred and Eighty two) the gold was recovered from his pant pockets. After due process of the law vide Order-In-Original No. 19/2012 dated 22.05.2012 the Original Adjudicating Authority ordered confiscation of the impugned gold under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act. But allowed redemption of the gold for re-export on payment of Redemption fine of Rs. 5,30,000/- (Rupees Five lakhs Thirty thousand) also imposed penalty of Rs. 1,00,000/- under Section 112 (a) of the Customs Act,1962. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 1608 & 1609/2013 dated 20.11.2013 rejected the appeal of the applicant.

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

3.1 3.1 The applicant has filed this Revision Application interalia on the following grounds; that the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The Applicant is an eligible passenger fulfilling all the conditions for concesson rate of duty; the applicant had come for the first time to India to visit his sick grand mother; He declared the gold to the officers and they proceeded to file a case of having tried to cross the green channel; Though he repeatedly told the officers that he is the owner of the gold and it was purchased by him the officers recorder a statement that he is not the owner of gold; It is an admitted fact that he did not pass through the green channel; As he was not in a position to raise funds he paid the fine and penalty by obtaining loans; The gold was not concealed; The imposition of redemption fine and penalty is very high and unreasonable; as per the circular 394/71/97-CUS GOI dated 22.06.1999 arrest and prosecution need not be considered in a routine manner in respect of foreign nationals and NRIs who have inadvertently not declared;



3.2 The Revision Applicant cited various assorted judgments and boards policies in support of re-export and in support of his case and prayed for permission to re-export the gold on payment of nominal redemption fine and reduced personal penalty.

4. A personal hearing in the case was held on 05.07.2018, the Advocate for the respondent Shri Palanikumar attended the hearing he re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of the goods was allowed. Nobody from the department attended the personal hearing.

5. 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 had he not been intercepted he would have gone without paying the requisite duty, under the circumstances confiscation of the gold is justified.

6. However, the facts of the case state that the Applicant had not cleared the Green Channel, in fact there is no allegation that the Applicant had tried to pass through the green channel. The ownership of the gold is not disputed. The gold was recovered from his pant pockets and therefore it was not indigenously concealed. The Applicant is not a repeat offender and does not have any previous cases registered against him. 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 the 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, moreso because he is a foreigner.

7. 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 that the goods are old and used and have been valued much higher than the actual price. Government is of the opinion that a lenient view can be taken in the matter. The Applicant has pleaded for re-export and the Government is inclined to accept the plea. In view of the above facts, the impugned Order in Appeal needs to be modified and the confiscated goods are liable to be allowed for export on reduced redemption fine and penalty.



8. The assorted gold jewelry weighing 407 gms valued at Rs. 10,68,782/- (Rupees Ten lakhs Sixty Eight thousand Seven hundred and Eighty two) is ordered to be redeemed for re-export. The redemption fine of Rs. 5,30,000/- (Rupees Five laks thirty thousand) is reduced to Rs. 4,00,000/- (Rupees Four 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. 1,00,000/- (Rupees One lakh) to Rs. 80,000/- (Rupees Eighty 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.

(Handwritten Signature)
23.7.18

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

ORDER No. ⁵²⁸/2018-CUS (SZ) /ASRA/MUMBAI DATED 20-07-2018

To,

Shri Muhammed Habib Bin Shaik Allavudeen
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High Court, 2nd Floor,
Chennai 600 001..

ATTESTED

(Handwritten Signature)
18/7/18

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

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. The Commissioner of Customs (Appeals), Custom House, Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

