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SPEED POST

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

F.No. 373/137/B/13-RA

Date of Issue 01/08/2018

ORDER NO. ⁵³²2/2018-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 Gowri Shankar

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. 1615/2013 dated 25.11.2013 passed by the Commissioner of Customs (Appeals), Chennai.

ORDER

This revision application has been filed by Shri Gowri Shankar (herein referred to as Applicant) against the order no 1615/2013 dated 25.11.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 02.01.2013. He was intercepted and found in possession of a gold jewelry weighing 131 gms valued at Rs. 3,80,555/- (Rupees Three lakhs Eighty thousand Five hundred and Fifty five). After due process of the law vide Order-In-Original No. 960/2012-Air dated 16.12.2012 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. 1,90,000/- (Rupees One lakhs Ninety thousand) also imposed penalty of Rs. 38,000/- 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. 1615/2013 dated 25.11.2013 rejected the appeal of the applicant.

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

3.1 The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; Goods must be prohibited before import or export simply because of nondeclaration goods cannot become prohibited; The Applicant submits that he had worn the gold chain and bracelet and had not concealed it; He has been wearing it for a long time; He is request for taking the gold chain back when leaving India was disregarded; The gold was visible to the naked eye and therefore the question of declaration does not arise; The CBEC circular no 9/2001 puts the onus on the officer to fill in details in the declaration form, if the same is not filled in by the Applicant; There is no allegation of having tried to cross the green channel the applicant was all along at the Red channel; The gold was not concealed ingeniously; 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.

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.

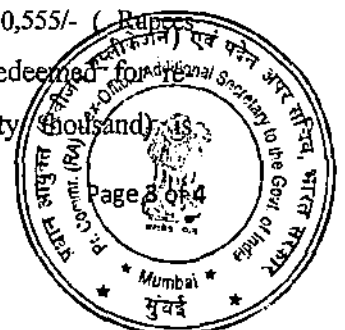
4. A personal hearing in the case was held on 05.07.2018, the Advocate for the respondent Shri Palanikumar attended the hearing he re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of the goods was allowed. Nobody from the department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

8. The assorted goods and gold weighing 131 gms valued at Rs. 3,80,555/- (Rupees Three lakhs Eighty thousand Five hundred and Fifty five) is ordered to be redeemed for re-export. The redemption fine of Rs. 1,90,000/- (Rupees One lakh Ninety thousand) is



reduced to Rs. 1,30,000/- (Rupees. One lakh Thirty 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. 38,000/- (Rupees Thirty Eight thousand) to Rs. 26,000/- (Rupees Twenty Six 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.

(Signature)
20.7.18

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

ORDER No. ⁵⁸² 72018-CUS (SZ) /ASRA/MUMBAI. DATED 20.07.2018

To,

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

ATTESTED

(Signature)
17/8/18
SANKARSAN MUNDA
Asstt. Commissioner of Customs & 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.

