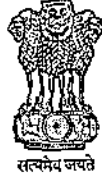


373/44/B/17-RA

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F.No. 373/44/B/17-RA

Date of Issue 02/08/2018.

ORDER NO. 542/2018-CUS (SZ)/ASRA/MUMBAI DATED 24.07.2018 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. Murugesan Saravanan

Respondent : Commissioner of Customs, Thiruvananthapuram.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. TVM-EXCUS-000-APP-51/2017 dated 07.03.2017 passed by the Commissioner of Customs (Appeals III), Cochin.



ORDER

This revision application has been filed by Shri. Murugesan Saravanan (herein referred to as Applicant) against the order TVM-EXCUS-000-APP-51/2017 dated 07.03.2017 passed by the Commissioner of Customs (Appeals III), Cochin.

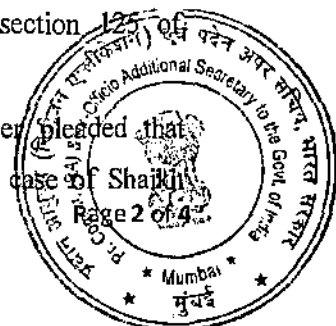
2. Briefly stated facts of the case are that the applicant, was intercepted at the Trivandrum International Airport on 22.10.2013. Examination of the airport trolleys carrying his baggage resulted in the recovery of five gold bars and gold ornaments totally 681.7 grams valued at Rs. 17,71,723/- (Rupees Seventeen lakhs Seventy one thousand Seven hundred and Twenty three). The gold bars and gold ornaments were indigenously concealed in a packet and attached to the underside of the airport trolley. The original Adjudication Authority vide order no. 02/2015 Cus(JC) dated 10.02.2015 absolutely confiscated the impugned gold. A penalty of Rs. 2,65,000/- was also imposed on the Applicant under section 112 of the Customs Act, 1962.

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Cochin, Commissioner of Customs (Appeals), vide his order No. TVM-EXCUS-000-APP-51/2017 dated 07.03.2017, rejected the Appeal of the Applicant.

4. Aggrieved with the above order the Applicant has filed this revision application inter alia on the grounds that;

4.1 The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; Gold is a restricted item and not a prohibited item and according to liberalized policy the gold can be released on redemption fine and penalty; The Adjudication Authority has simply glossed over the judgments and points raised in the Appeal grounds; That the department one way states that the he has not declared the gold and on the other questions the applicants ownership of the gold, both the stands are contrary as only the owner can file a declaration; however the general principle is that the carrier or person from whom goods are recovered is the owner; Goods must be prohibited before import or export simply because of non declaration goods cannot become prohibited.; The adjudicating authority has not exercised the option available under section 125 of the Customs Act, 1962,

4.2 The Applicant further pleaded that as per the Applicant further pleaded that as per the judgement by CEGAT South Zonal Bench , Chennai in the case of Shaikhi



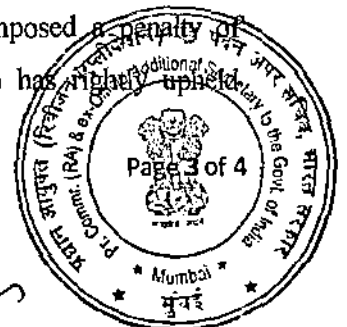
Shahabuddin vs Commissioner of Customs Chennai has held that absolute confiscation without giving the option of redemption for gold concealed in shaving cream tubes is not proper, and the case was remanded for denovo adjudication; the Apex court in the case of Hargovind Dash vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has pronounced that the quasi judicial authorities should use the discretionary powers in a judicious and not an arbitrary manner and option to allow redemption is mandatory; 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.

4.3 The Revision Applicant cited various assorted judgments and boards policies in support of his case and prayed for release of the impugned currency on the redemption fine and reduce the personal penalty and thus render justice.

5. 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.

6. The Government has gone through the case records it is observed that the Applicant had concealed the gold by ingeniously concealing in a packet and attached to the underside of the airport trolley. The concealment was planned so as to avoid detection and evade Customs officers 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 out of India in contravention of the provisions of the Customs Act, 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 it out without payment of customs duty.

7. 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. 2,65,000/-. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.



8. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order No. No. TVM-EXCUS-000-APP-51/2017 dated 07.03.2017 passed by the Commissioner of Customs (Appeals III), Cochin, is upheld as legal and proper.

9. Revision Application is dismissed.

10. So, ordered.

Ashok Kumar Mehta
24.7.18

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

ORDER No. ⁵⁴² 72018-CUS (SZ) /ASRA/mumbai2 DATED 24.07.2018

To,

Shri Murugesan Saravanan
C/o Shri S. Palinikumar, Advocate,
No. 10, Sukurama Street,
Second Floor,
Chennai -600 001.

Copy to:

1. The Commissioner of Customs, Thiruvananthapuram
2. The Commissioner of Cus. & C. Ex. (Appeals), Cochin
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

ATTESTED

Sankarsan Munda

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

