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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. 373/131/B/15-RA/1280

Date of Issue 16/08/2018

ORDER NO. 562/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 30.07.2018 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 Hussain Shahul Hameed
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. 128/2014 dated 16.12.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Hussain Shahul Hameed (herein referred to as Applicant) against the Order in Appeal C. Cus No. 128/2014 dated 16.12.2014 passed by the Commissioner of Customs (Appeals), Chennai.

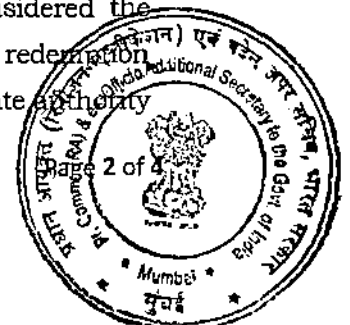
2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 04.09.2014. He was intercepted and examination of his baggage resulted in the recovery of one Pantam flying Cam, 8 cartons of B&H cigarettes both valued at Rs. 16,000/-, Two gold bits weighing 100 gms and valued at Rs. 2,57,250/-, 10 Sony playstations and 5 used mobiles valued at Rs. 35,000/- and one Sony 40" TV.

3. After due process of the law vide Order-In-Original No. 1095/2014 Batch C dated 04.09.2014 the Original Adjudicating Authority ordered confiscation of the Sony playstations and used mobiles valued at Rs. 35,000/- 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 goods on payment of a fine of Rs. 17,500/-, ordered absolute confiscation of the one Pantam flying Cam, 8 cartons of B&H cigarettes both valued at Rs. 16,000/- and Two gold bits weighing 100 gms and valued at Rs. 2,57,250/- and imposed penalty of Rs. 30,800/- under Section 112 (a) of the Customs Act, 1962. The Sony TV was allowed on applicable customs duty.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 128/2014 dated 16.12.2014 allowed the one Pantam flying Cam, 8 cartons of B&H cigarettes 10 Sony play stations and 5 used mobiles totally valued at Rs. 51,000/- on payment of Rs. 20,000/- and also reduced the personal penalty to Rs. 20,000/-. The Commissioner (Appeals) upheld the order of absolute confiscation in respect of the two gold bits.

4. The applicant has filed this Revision Application inter alia on the following grounds that

4.1 The order of the authorities is wholly unfair, unreasonable, unjust, biased, arbitrary and contrary to legal principles; The Applicant went to Abu Dabhi to seek employment and brought a few items for his personal use and the gold was gifted to him; None of the items are in commercial quantities; The single items ought to have been released under free allowance; The goods were not concealed and even the Appellate authority has agreed that the goods were not concealed; The import of gold is restricted but not prohibited therefore it should have been allowed on redemption fine and penalty; The Commissioner should have considered the quantum of penalty to be as per the role paid by the individual, the redemption fine and penalty therefore is harsh and not proportionate; The Appellate authority



should have considered that there are a plethora of decisions permitting clearance of gold brought by genuine bonafide passengers; The Applicant has a strong grounds for redeeming the gold based on various decisions of GOI and The Tribunal.

4.2 The Revision Applicant cited case laws in his defense and prayed for considering the eligible goods under free allowance and release the gold on payment of duty and reasonable fine and penalty as deem fit in the interest of justice.

5. A personal hearing in the case was scheduled to be held on 18.07.2018, the Advocate for the respondent Shri B. Kumar 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 gold was allowed and requested for a lenient view to be taken in the matter. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. A written declaration of goods was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the goods is justified.

7. However, the facts of the case state that the Applicant had not cleared the Green Channel. The goods were recovered from his baggage and they were not indigenously concealed. Though the Applicant was involved in offences earlier, in the present case there has been no attempt to conceal the items as the Applicant had taken the red channel route and therefore was it was not a hardcore attempt to smuggle the goods. The gold was also not concealed ingeniously and under the circumstances absolute confiscation of the gold is harsh and unjustified. 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.

8. 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. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The Applicant has pleaded for release of the gold on redemption fine and penalty and the Government is inclined to accept the impugned Order in Appeal therefore needs to be modified.



9. In partial modification of the order in appeal the Government sets aside the absolute confiscation of the gold. The impugned gold weighing 100 gms valued at Rs. 2,57,250/- (Rupees Two lakhs Fifty seven thousand Two hundred and Fifty) is allowed for re-export on payment of redemption fine of Rs. 1,00,000/- (Rupees One lakh thousand) under section 125 of the Customs Act, 1962. Government observes that the penalty of Rs. 20,000/- (Rupees Twenty thousand) under section 112(a) of the Customs Act,1962 is appropriate

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

11. So, ordered.

Ashok Kumar Mehta
30/7/18

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

ORDER No. 562/2018-CUS (SZ) /ASRA/MUMBAI

DATED 30-07-2018

To,

Shri Hussain Shahul Hameed
c/o M/s L. K. Associates
"Time Tower" Room No. 5, II Floor,
169/84, Gengu Reddy Road,
Egmore, Chennai- 600 008.

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.

ATTESTED

Sankarsan Munda
17/8/18
SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

