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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. 373/158/B/15-RA

Date of Issue 10/08/2018

ORDER NO. ⁵⁷³/2018-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 Kader Mohideen Pahurutheen

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. 1272/2014 dated 28.07.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Kader Mohideen Pahurutheen (herein referred to as Applicant) against the Order in Appeal C. Cus No. 1272/2014 dated 28.07.2014 passed by the Commissioner of Customs (Appeals), Chennai.

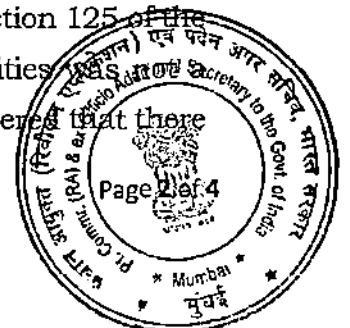
2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 02.04.2015. He was intercepted and examination of his person resulted in the recovery of two gold bits weighing 98 gms valued at Rs. 2,54,769/- (Rupees Two lakhs Fifty four thousand Seven hundred and Sixty nine).

3. After due process of the law vide Order-In-Original No. 453/2014 Batch B dated 02.04.2014 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) and e, (l), (m) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 25,000/- under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 1272/2014 dated 28.07.2014 rejected the appeal of the applicant.

4. The applicant has filed this Revision Application interalia 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 gold was not concealed and was brought for the genuine purpose of marriage; The import of gold is restricted but not prohibited therefore it should have been allowed on redemption fine and penalty; The Applicant had carried the gold bits in his pant pockets and was discovered at the metal detector and therefore the departments allegation that he was intercepted while crossing the green channel is not correct; The records pertaining to his previous offence were not supplied to the Applicant; The applicant was not found to be ineligible to import gold; The option to redeem the gold ought to have been given to the Applicant as it is mandatory under the section 125 of the Customs Act, 1962; The gold brought in reasonable quantities is not a prohibited item; 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 passing such orders 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 reiterated 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 the goods are clearly in commercial quantities 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. There is no allegation that the Applicant had tried to pass through the green channel. The impugned gold was kept in his pant pockets and it was not indigenously concealed. Import of gold is restricted not prohibited. 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 absolute confiscation of the gold is harsh and unjustified and therefore a lenient view can be taken in the matter. The Applicant has pleaded for redemption of the gold on fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

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 absolute confiscation of the gold is harsh and unjustified and therefore a lenient view can be taken in the matter. The Applicant has pleaded for redemption of the gold on fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.



9. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 98 gms valued at Rs. 2,54,769/- (Rupees Two lakhs Fifty four thousand Seven hundred and Sixty nine) is allowed to be redeemed for re-export on payment of redemption fine of Rs. 1,00,000/- (Rupees One lakh) 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. 25,000/- (Rupees Twenty Five thousand) to Rs. 20,000/- (Rupees Twenty thousand) under section 112(a) of the Customs Act,1962.

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

11. So, ordered.

(Signature)
30/7/18

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. ⁵⁷³/2018-CUS (SZ) /ASRA/MUMBAI

DATED 30.07.2018

To,

Shri Kader Mohideen Pahurutheen
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

(Signature)
10/8/18

S.R. HIRULKAR

Assistant Commissioner (R.A.)

