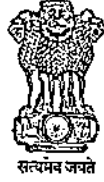


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F.No. 373/130/B/15-RA

Date of Issue 10/08/2018

ORDER NO. 575/2018-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 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. 146/2014 dated 19.12.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Shahul Hameed (herein referred to as Applicant) against the Order in Appeal C. Cus No. 146/2014 dated 19.12.2014 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 29.06.2014. He was intercepted and examination of his baggage resulted in the recovery of four gold bits weighing 264.5 gms valued at Rs. 7,55,148/- (Rupees Seven lakhs Fifty Five thousand One hundred and Forty eight) and one Sony 40" LED TV.

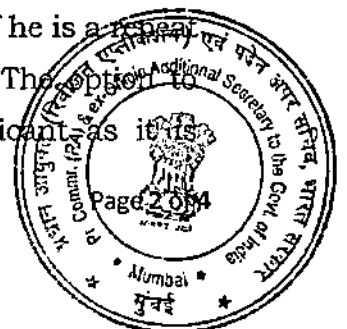
3. After due process of the law vide Order-In-Original No. 814/2014 -AIU dated 01.09.2014 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) and e, (l), (m) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 1,00,000/- 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. 146/2014 dated 19.12.2014 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 procured by his cousin and given to him; The import of gold is restricted but not prohibited therefore it should have been allowed on redemption fine and penalty; The Applicant not concealed the gold as it was kept with his clothes in his baggage; He was intercepted at the scanning area and therefore the allegation that he tried to cross the green channel is not correct; The records pertaining to his previous offence were not supplied to the Applicant, the value involved in the earlier cases was only Rs. 2,94,000/- and he was not prosecuted in those offences; As these offences were made

4 years back they cannot be used against the applicant as if he is a repeat offender; The gold was given for his daughters marriage; The gold 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 was 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.

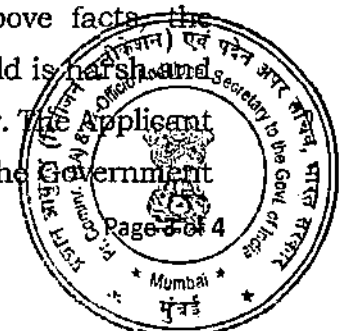
4.2 The Revision Applicant cited case laws in his defense and prayed for passing such orders as deem fit in the interest of justice.

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 under the circumstances confiscation of the gold is justified.

7. However, the facts of the case state that the Applicant had not cleared the Green Channel. The impugned gold was kept with his clothes in his baggage 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.

9. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 264.5 gms valued at Rs. 7,55,148/- (Rupees Seven lakhs Fifty Five thousand One hundred and Forty eight) is allowed to be redeemed for re-export on payment of redemption fine of Rs.2,75,000/- (Rupees Two lakhs Seventy Five 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. 1,00,000/- (Rupees One lakh) to Rs. 55,000/- (Rupees Fifty five^{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.

Ashok Kumar Mehta
24/7/18

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

ORDER No. ⁵⁷⁵/2018-CUS (SZ) /ASRA/MUMBAI

DATED 30.07.2018

To,

Shri 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.

ATTESTED

S.R. Hirulkar
S.R. HIRULKAR
Assistant Commissioner (R.A.)

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.

