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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. 373/389/B/14-RA / 2018

Date of Issue 10/08/2018

ORDER NO. 589/2018-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 Kumar Kuttiappan

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. 1729/2014 dated 25.09.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Kumar Kuttiappan (herein referred to as Applicant) against the Order in Appeal C. Cus No. 1729/2014 dated 25.09.2014 passed by the Commissioner of Customs (Appeals), Chennai.

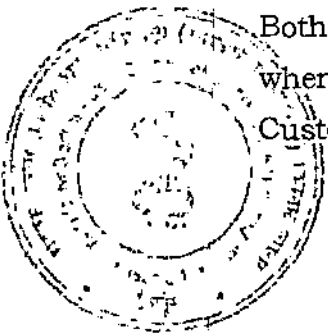
2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 24.04.2014. He was intercepted at the green channel and examination of his person resulted in the recovery of two gold bars of one kilogram each totally weighing 2000 gms valued at Rs. 54,04,000/- (Rupees Fifty Four lakhs Four thousand) in a polyethene covered packet from his pant pockets.

3. After due process of the law vide Order-In-Original No. 136/20.02.2014 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. 5,50,000/- 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. 1729/2014 dated 25.09.2014 rejected the appeal of the applicant.

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; Both the authorities failed to note that the petitioner is one of the trustee of Rajakaliyamman Temple and when he was at the red channel he produced a letter authorizing the payment of duty which was destroyed by the officer; The gold should have been allowed on payment of fine under section 125 of the Customs Act, 1962, but the officers were predetermined to confiscate the gold; The gold was brought for making Temple ornaments; Both the authorities failed to note that the restricted goods can be imported subject to conditions; Both the authorities failed to note the bonafide intentions of the applicant when he showed the letter of the temple authority and requested the Customs officer to fill the card; The statements and documents referred by



the department were not furnished to the Applicant; Both the authorities failed to note that ignorance of the law is not an excuse, does not hold true for a foreigner as the Applicant is a Malasian citizen.

4.2 The Revision Applicant cited case laws in his defense and prayed for release of the gold for re-export on reasonable fine and penalty and passing such orders as deem fit in the interest of justice.

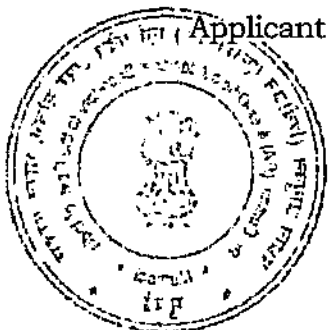
5. A personal hearing in the case was scheduled to be held on 18.07.2018, the Advocate for the respondent Shri B. Kumar attended the hearing, he reiterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed and requested 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 carried by the applicant in his pant pockets worn by the applicant 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, moreso because he is a foreigner.

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 reduction of the redemption fine and penalty and the



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Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

9. The absolute confiscation of the gold is set aside. Government allows the gold totally weighing 2000 gms valued at Rs. 54,04,000/- (Rupees Fifty Four lakhs Four thousand)to be redeemed for re-export on payment of redemption fine of Rs. 25,00,000/- (Rupees Twenty Five lakhs) 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. 5,50,000/- (Rupees Five lakhs fifty thousand) to Rs.5,00,000/- (Rupees Five lakh) 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. ⁵⁸⁸/2018-CUS (SZ) /ASRA/mumbai

DATED 30.07.2018

To,

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

ATTESTED

(Signature)
10.8.18
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.

