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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. 373/383/B/14-RA

Date of Issue 10/08/2018

ORDER NO. ⁵⁸⁹/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 25.07.2018 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 Mohamed Asarup

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 No. 1444/2014 dated 08.08.2014 passed by the Commissioner of Customs (Appeals), Chennai.



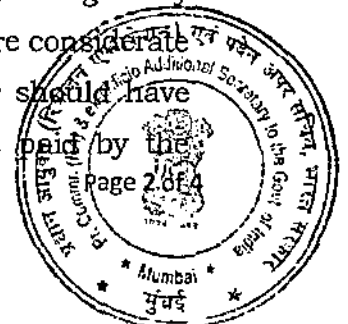
ORDER

This revision application has been filed by Shri Mohamed Asarup (herein referred to as Applicant) against the order no 1444/2014 dated 08.08.2014 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 02.04.2014. He was intercepted in the green channel and examination of his baggage resulted in the recovery of two gold bits weighing 100 gms and valued at Rs. 2,59,968/- (Rupees Two lakhs Fifty Nine thousand Nine hundred and sixty eight). After due process of the law vide Order-In-Original No. 456/2014 Batch C dated 02.04.2014 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 26,000/- under Section 112 (a) of the Customs Act, 1962. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 1444/2014 dated 08.08.2014 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; The Appellate authority has erred in contending that the applicant did not declare the goods; The Appellate authority should have considered that the applicant is a bonafied passenger who volunteered to clear the gold on payment of duty; The applicant never brought prohibited goods that warranted confiscation; It is mandatory to allow redemption of the non prohibited goods under section 125 of the Customs Act, 1962; The Applicant never crossed either the customs clearance or passed through the green channel with intention to evade duty as there was no concealment; The gold brought by the applicant was in reasonable limits and was purchased for his daughters marriage; There are a plethora of decisions permitting clearance of the gold by genuine/ bonafide passengers, and where the authorities were considerate enough to reduce the fine and penalty; The Commissioner should have considered the quantum of penalty to be as per the role paid by the



individual; It should have been noticed that the Applicant has not brought any goods restricted or prohibited warranting confiscation.

4.2 The Revision Applicant cited case laws in his defense and prayed for reduction of redemption 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 reiterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals 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. However, the facts of the case state that the gold was recovered from his baggage and the Applicant had not concealed the impugned gold indigenously. The applicant was also intercepted before he cleared the green channel. The ownership of the gold is not disputed. 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.

7. 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 payments of redemption fine and penalty and the 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 100 gms valued at Rs. 2,59,968/- (Rupees Two Lakh Fifty



Nine thousand Nine hundred and sixty eight) 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. 26,000/- (Rupees Twenty six 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.

terms.

9. So, ordered.

(Handwritten Signature)
25/7/18

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

ORDER No. ⁵⁸⁹/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 25-07-2018

To,

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

ATTESTED

(Handwritten Signature)
10/7/18
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.

