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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. 373/136/B/15-RA

Date of Issue 13/06/2018

ORDER NO. 595/2018-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 Sadiq Basha Pukrudeen

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. 108/2014 dated 10.12.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Sadiq Basha Pukrudeen (herein referred to as Applicant) against the Order in Appeal C. Cus No. 108/2014 dated 10.12.2014 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 04.03.2014. He was intercepted and examination of his baggage resulted in the recovery of two gold bars totally weighing 200 gms valued at Rs. 5,45,147/- (Rupees Five lakhs Forty five thousand One hundred and Forty seven).

3. After due process of the law vide Order-In-Original No. 247/2014 -AIR dated 15.07.2014 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. 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. 108/2014 dated 10.12.2014 reduced the penalty from Rs. 50,000/- to Rs. 30,000/- and rejected rest of 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 Applicant is a bonafide traveler and does not have any offence registered against him; The Applicant did not conceal the gold and did not attempt to pass through the green channel; There are a catena of judgments wherein gold has been released without payment of redemption fine and penalty and only applicable customs duty; The gold is retracted and not prohibited therefore 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 Appellate authority should have considered that there are a plethora of decisions permitting clearance of gold brought by genuine bonafide passengers; The Applicant has 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 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 gold 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 baggage and it was not indigenously concealed. Import of gold is restricted not prohibited. The Applicant is not a frequent visitor and has no previous offences registered against him. 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 impugned gold weighing 200 gms valued at Rs. 5,45,147/- (Rupees



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Forty five thousand One hundred and Forty seven) is allowed to be redeemed on payment of redemption fine of Rs. 2,00,000/- (Rupees Two lakhs) under section 125 of the Customs Act, 1962. Government observes that the penalty of Rs. 30,000/- (Rupees Thirty thousand) imposed 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.

(Handwritten Signature)

(ASHOK KUMAR MEHTA)

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

ORDER No. ⁵⁹⁵ /2018-CUS (SZ) /ASRA/mumbai

DATED 30.07.2018

To,

Shri Sadiq Basha Pukrudeen
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

(Handwritten Signature)
13/8/18

SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

