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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. 373/78/B/16-RA / 1993

Date of Issue 13/08/2018

ORDER NO. 604/2018-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 Naina Mohamed

Respondent : Commissioner of Customs(Airport), Madurai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal C. Cus
No. MAD-CEX-000-APP-074-16 dated 06.05.2016
passed by the Commissioner of C. Ex (Appeals-I)
Madurai.



ORDER

This revision application has been filed by Shri Naina Mohamed (herein after referred to as the Applicant) against the order no C. Cus No. MAD-CEX-000-APP-074-16 dated 06.05.2016 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case is that the applicant, arrived at the Chennai Airport on 27.11.2013. He was intercepted by the officers as he attempted to walk through the Green channel without declaration. Examination of his person resulted in the recovery of four gold bars weighing 400.74 grams valued at Rs. 12,30,270/- (Rupees Twelve lakhs Thirty thousand and Seventy). The gold bars were tied around his left shoulder and concealed in his armpit.

3. The Original Adjudicating Authority vide Order-In-Original No. MAD-CUS-000-JTC-03-2015 dated 29.05.2015 ordered for absolute confiscation of the impugned gold under Section 111 (d), and (l) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 2,00,000/- under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner of C. Ex (Appeals-I) Madurai who vide Order-In-Appeal MAD-CEX-000-APP-074-16 dated 06.05.2016 rejected the appeal of the applicant.

5. The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The Appellate authority has simply glossed over the judgments and points raised in the appeal grounds and rejected the Appeal; Gold is not a prohibited item and can be released on payment of redemption fine and baggage duty; the gold biscuits were brought for his family and he was ready to pay the appropriate duty however the officers detained it for adjudication; The averments made that the gold was received from Mohan is based on non-existent materials and the same amounts to extraneous reasons; The order one way states that the passenger has not declared the gold and on the other hand states that Applicant is not the owner of the gold, even assuming without admitting the Applicant is not the owner then the question of declaration does not arise, as only the owner can file



declaration; Section 125 of the customs Act 1962 allows the goods to be released on Redemption fine and penalty even when confiscation is authorized.

5.2 The Applicant further pleaded that as per the judgement by CEGAT South Zonal Bench , Chennai in the case of Shaikh Shahabuddin vs Commissioner of Customs Chennai has held that absolute confiscation without giving the option of redemption for gold concealed in shaving cream tubes is not proper, and the case was remanded for denovo adjudication; The Hon'ble High Court of Andhra Pradesh in the case of Sheikh Jamal Basha vs GOI 1997 (91) ELT 277 (AP) has stated held that under section 125 of the Act is Mandatory duty to give option to the person found guilty to pay fine in lieu of confiscation; The Apex court in the case of Hargovind Dash vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has pronounced that the quasi judicial authorities should use the discretionary powers in a judicious and not an arbitrary manner;

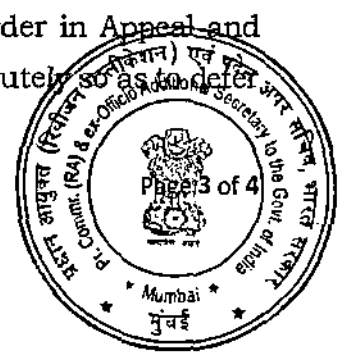
5.3 The Revision Applicant cited various assorted judgments in support of re-export even when the gold was concealed and prayed for setting aside the impugned order and permission to re-export the gold on payment of nominal redemption fine and reduced personal penalty.

6. A personal hearing in the case was held on 19.04.2018, the Advocate for the respondent Shri Palanikumar re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed. Nobody from the department attended the personal hearing.

7. The Government has gone through the case records it observed that the Applicant had ingeniously concealed the gold by tying them with a handkerchief around his left shoulder and indigenously concealed it in his armpit. It was an attempt made with the intention to get past the customs authorities. The concealment of the gold was deliberately planned to avoid detection and to dodge the Customs Officer and smuggle out the same without payment of appropriate duty. This ingenious concealment clearly indicates mensrea, and that there was no intention of declaring the gold to the authorities and if it was not intercepted, the gold would not suffer payment of customs duty. There is no doubt about the fact that the provisions of Customs Act, 1962 has been contravened and therefore, the seized gold is liable for absolute confiscation. In view of the above mentioned observations the Government is inclined to agree with the Order in Appeal and holds that the impugned gold has been rightly confiscated absolutely.

ACQUIM HAZRANMA2
no intention of declaring the gold to the authorities and if it was not intercepted, the gold would not suffer payment of customs duty.

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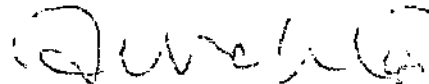


such passengers from such activities in the future. Hence the Revision Application is liable to be rejected.

8. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order MAD-CEX-000-APP-074-16 dated 06.05.2016 passed by the Commissioner of C. Ex (Appeals-I) Madurai is upheld as legal and proper.

9. Revision Application is dismissed.

10. So, ordered.


 (ASHOK KUMAR MEHTA) 20/7/18
 Principal Commissioner & ex-officio
 Additional Secretary to Government of India

ORDER No. 604/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 30.07.2018


To,

Shri Naina Mohamed
 C/o S. Palanikumar, Advocate,
 No. 10, Sunkurama Chetty Street,
 Opp High court, 2nd Floor,
 Chennai 600 001.

Copy to:

1. The Commissioner of Customs, International Airport, Madurai
2. The Commissioner of C. Ex. ustoms (Appeals-I), Madurai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

ATTESTED


 13/8/18

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

