



GOVERNMENT OF INDIA MINISTRY OF FINANCE (DEPARTMENT OF REVENUE) 8th Floor, World Trade Centre, Centre - I, Cuffe Parade, Mumbai-400 005

F.No. 373/382/B/14-RA

Date of Issue 13 08 2018

ORDER NO.607/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 02.07.2018 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 Murugun

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. 1281/2014 dated 28.07.2014 passed by the

Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Murugun (herein referred to as Applicant) against the Order in Appeal C. Cus No. 1281/2014 dated 28.07.2014 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 23.03.2014. He was intercepted and examination of his person resulted in the recovery of two gold bits totally weighing 44 gms valued at Rs. 1,20,912/- (Rupees One lakh twenty thousand Nine hundred and twelve).
- 3. After due process of the law vide Order-In-Original No. 374/2014-Batch D dated 23.03.2014 the Original Adjudicating Authority ordered 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. But allowed redemption on payment of Rs. 60,000/- as redemption fine and imposed penalty of Rs. 5,000/- 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. 1281/2014 dated 28.07.2014 reduced the redemption fine from Rs. 60,000/- to Rs.30,000/- and modified 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 passenger and brought the gold as professional fee for providing astrological advice and was brought by the Applicant for his daughters marriage; The applicant had no intention to evade payment of duty; There was no concealment and the goods were kept open for examination and there was no concealment; As personal jewelry is allowed as baggage the Applicant was very right in bringing the gold; Personal jewelry in reasonable quantity is not a prohibited item; The quantum of penalty should also be proportionate to the role played by the individual; The gold was not concealed and there is no previous offence of the applicant.

- 4.2 The Revision Applicant cited case laws in his defense and prayed for release of the gold unconditionally by 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 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 not indigenously concealed by the Applicant. The Applicant further avers that the gold that he received the gold as professional fees. The 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 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.

SANKARSAN MUHDA Mail Centicipal of Compact. Ct.



- 9. The Government allows the gold to be redeemed for re-export. The redemption fine impsed on the impugned gold weighing 44 gms valued at Rs. 1,20,912/- (Rupees One lakh twenty thousand Nine hundred and twelve) is reduced from Rs. 30,000/- (Rupees Thirty thousand) to Rs. 20,000/- (Rupees Twenty thousand) under section 125 of the Customs Act, 1962. Government observes that considering the facts of the case the penalty of Rs. 5,000/- (Rupees Five 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.

(ASHOK KUMAR' MÉHTÁ)

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

ORDER No. 607/2018-CUS (SZ) /ASRA/MUMBA1.

DATED 02.07.2018

To,
Shri Murugun
c/o M/s L. K. Associates
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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

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