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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. 373/260/B/15-RA / 369

Date of Issue 27/08/2018

ORDER NO. 689/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 16.08.2018 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 Moorthy Kothandapani

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. 608/2015 dated 30.09.2015 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Moorthy Kothandapani (herein referred to as Applicant) against the Order in Appeal C. Cus No. 608/2015 dated 30.09.2015 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 04.09.2015. He was intercepted and examination of his person resulted in the recovery of assorted gold jewelry totally weighing 79 gms valued at Rs. 1,94,874/- (Rupees One lakh Ninety four thousand Eight hundred and Seventy four)-.

3. After due process of the law vide Order-In-Original No. 910/2015 Batch B dated 04.09.2015 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. 20,000/- 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. 608/2015 dated 30.09.2015 rejected the appeal of the applicant.

5. The applicant has filed this Revision Application inter alia on the following grounds that

5.1 The impugned order passed by the Commissioner (Appeals) is erroneous in both facts and law; The order of the authorities has been passed without considering any of the submissions of the Applicant and is therefore non speaking order; The gold ornaments were purchased secondhand from a pawn shop and therefore its value is much lower, a cursory look can ascertain the same; There are judgements galore which state that the gold imported in violation of conditions cannot be absolutely confiscated are to be allowed redemption on payment of fine, it is mandatory under the section 125 of the Customs Act, 1962; Gold is a restricted item and not prohibited; 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.



4.2 The Revision Applicant cited various other cases in support of his case prayed that the Hon'ble Revision Authority may please set aside the order in Appeal and permit re-export of the gold in the interest of justice.

5. A personal hearing in the case was scheduled to be held on 23.07.2018, the Advocate for the respondent Shri G. Derrick Sam attended the hearing, he reiterated the submissions filed in Revision Application and pleaded for setting aside the order in appeal and allow the revision application.

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. Even though the Applicant is a frequent traveler there are no offences registered against him. The Government, also observes that impugned gold was kept in his undergarments however there was no ingenious concealment. 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.

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 for re-export 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 gold and impugned gold weighing 79 gms valued at Rs. 1,94,874/- (Rupees One Lakh Ninety four thousand Eight hundred and Seventy four) is allowed to be redeemed.



for re-export on payment of redemption fine of Rs. 80,000/- (Rupees Eighty thousand) 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. 20,000/- (Rupees Twenty thousand) to Rs. 16,000/- (Rupees Sixteen 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.

11. So, ordered.

(Handwritten signature)

(ASHOK KUMAR MEHTA)

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

ORDER No. ⁶²⁹/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 16.08.2018

To,

Shri Moorthy Kothandapani
c/o Shri G. Derrick Sam
17, First Cross Street,
Fourth Avenue,
Besant Nagar,
Chennai - 600 090

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)
27.8.18

S.R. HIRULKAR
Assistant Commissioner (R.A.)

