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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. 373/157/B/14-RA/1217 Date of Issue 22.02.2018

ORDER NO. 65/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 21.02.2018 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 Kunhi

Respondent : Commissioner of Customs (Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus. No. 354/2014 dated 03.03.2014 passed by the Commissioner of Customs (Appeals), Chennai.

Pr. Comm. (RA) & ex-Officio Additional Secretary to the Govt. of India
प्रधान आयुक्त (रिवीजन एप्लीकेशन) एवं पदेन अपर सचिव, भारत सरकार
Mumbai
मुंबई

ORDER

This revision application has been filed by Shri. Mohamed Kunhi (herein referred to as Applicant) against the Order in Appeal no 354/2014 dated 03.03.2014 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 07.07.2013. Examination of his baggage and person resulted in the recovery of, among other assorted items, gold coins totally weighing 16gms valued at Rs. 40,752/- and 14 cartons of Cigarettes valued at Rs. 15,400/-. The Original adjudicating Authority vide Order-In-Original No. 777/2013- Batch C dated 07.07.2013 after allowing duty free allowance, released the assorted items on payment of Customs duty. The gold coins and cigarettes valued at Rs. 56,152/- were absolutely confiscated under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and a penalty of Rs. 6,000/- was imposed under Section 112 (a) of the Customs Act, 1962.

3. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus No. 354/2014 dated 03.03.2014 rejected the appeal of the applicant.

The applicant has filed this Revision Application interalia on the following grounds that;

4.1. The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case.

4.2 As per the findings there are no specific allegations that he had attempted to pass through the Green Channel.

4.3 He had declared orally that he possessed gold coins and voluntarily handed over the gold coins to the Customs Officers and the CCTV video record would ascertain the same. He was all along at the red channel under the control of the Customs Officers.

4.4 The seized gold bar was not concealed and was not brought for commercial purposes. Having orally declared the gold the question of declaration does not arise.

4.5 Even assuming without admitting he had not declared the gold before the officers it is a technical fault and is pardonable. Secondly, CBEC Circular 09/2001 gives specific directions to the Customs officer that the declaration should not be blank, if not filled in by the passenger the officer will help them to fill the declaration card.

4.7 He requested the officers to allow him to take back the gold bar when leaving India or re-export which was not considered. He had Singapore dollars to pay customs duty and informed the officers however it was also not considered

The Revision Applicant prayed for permission to re-export the gold coins on payment of nominal redemption fine and reduced personal penalty.

5. A personal hearing in the case was held on 04.12.2017, the Advocate for the respondent Shri Palanikumar requested for an adjournment due to a medical emergency. The personal hearing was rescheduled on 29.01.2018, which was attended by the Shri Palanikumar, the Advocate, 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.

6. The Government has gone through the case records it is seen the gold coins were not declared by the passenger as required under Section 77 of the Customs Act, 1962. The Applicant is a frequent passenger and well aware of the Rules. If he was not intercepted before the exit, the Applicant would have taken out the gold coins without payment of customs duty. Hence the confiscation of the gold is justified.

7. However, the gold coins were not in commercial quantity and from the facts of the case it appears that gold coins were personal and not brought for commercial purposes. Applicants ownership of the gold coins is not disputed. The facts of the case also state that the Applicant had not cleared the Green Channel exit and was intercepted before the exit. 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. Considering all factors, the Government is of the opinion that the absolute confiscation of the impugned gold is harsh and not justified.

8. As the applicant has pleaded for re-export of the confiscated gold. Government is inclined to accept the plea. In view of the above mentioned observations, the Government also finds that a lenient view can be taken while imposing redemption fine and penalty upon the applicant. 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. The order of absolute confiscation of the gold coins in the impugned Order in Appeal therefore needs to be modified, the confiscated gold coins are liable to be allowed for re-export on payment of redemption fine.

9. Taking into consideration the foregoing discussion, Government modifies the order of absolute confiscation of the impugned gold. Government allows redemption of the confiscated gold bracelet for re-export in lieu of fine. The confiscated gold coins weighing 16gms, valued at Rs. 40,752/-/-(Rupees Forty thousand, Seven hundred and Fifty two) is ordered to be redeemed for re-export on payment of redemption fine of Rs 10,000/-(Rupees Ten thousand) under section 125 of the Customs Act, 1962. Government also observes that facts of the case justify slight reduction in penalty imposed. The penalty imposed on the Applicant is therefore

reduced from Rs. 6,000/- (Rupees Six thousand) to Rs 3,000/- (Rupees Three thousand) under section 112(a) of the Customs Act,1962.

10. The impugned Order in Appeal 354/2014 dated 03.03.2014 is modified as detailed above. Revision Application is partly allowed.

11. So, ordered.

21.2.2018

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

ORDER No. 65/2018-CUS (SZ) /ASRA/MUMBAI DATED 21.02.2018

To,

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

True Copy Attested

22.2.18

एस. आर. हिरूलकर
S. R. HIRULKAR
(A-C)

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. The Commissioner of Customs (Appeals), Custom House, Rajaji Salai Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.