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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. 373/02/B/16-RA/MSI

Date of Issue 07/09/2018

ORDER NO. ⁶⁶⁰/2018-CUS (SZ)/ASRA/MUMBAI DATED 31.08.2018 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 Sulthan Nafil Mohaideen

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus-I No. 413/2015 dated 27.08.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by Shri Sulthan Nafil Mohaideen (herein after referred to as the Applicant) against the order in appeal No. 413/2015 dated 27.08.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

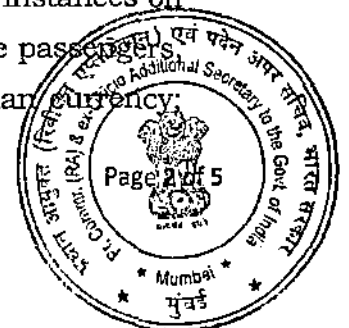
2. Briefly stated the facts of the case is that the applicant arrived at the Chennai International Airport on 22.06.2015. Examination of his baggage and person resulted in the recovery of two gold pieces weighing 104 gms valued at Rs. 2,58,458/- (Rupees Two Lakhs Fifty eight thousand Four hundred and Fifty eight). The gold was from his under garments.

3. The Original Adjudicating Authority vide Order-In-Original No. 648/2015 Batch B dated 22.06.2015 ordered 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. 26,000/- under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 413/2015 dated 27.08.2015 rejected the appeal of the Applicant.

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

5.1 The order of the appellate authority is unjust, unfair unreasonable biased and arbitrary and devoid of merits and unsustainable; The Applicant is a bonafide passenger and the gold was gifted to his mother; The gold was recovered from his pant pockets; The Applicant did not opt for the green channel and informed the baggage officer of the gold. The adjudicating authority is well aware that every passenger has to pass the metal detector and therefore there is no possibility of passing through by concealing the gold; Gold is not a prohibited item and goods should have been allowed for re-export and the provisions of section 125 should have been applied; The applicant places his reliance on various instances on which gold and gold ornaments were imported by ineligible passengers, where the gold was allowed on baggage rates and in Indian currency.



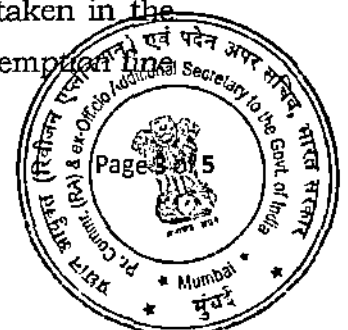
Various appellate forums have repeatedly iterated that gold cannot be confiscated absolutely and an option for redemption has to be extended to the passenger under section 125 of the Customs Act, 1962; The gold brought by the Applicant is not prohibited and liable for redemption;

5.2 The Applicant submitted case laws in favor of his case and prayed for taking this memorandum of Appeal on record and pass such order so as to direct the lower authority to release the gold on payment on fine and penalty as may be fit and proper in the facts and circumstances of the case.

6. A personal hearing in the case was scheduled to be held on 09.08.2018, the Advocate for the respondent Shri B. Kumar attended the hearing, he reiterated the submissions filed in Revision Application and pleaded for setting aside the order in appeal and allowing re-export on redemption fine and penalty.

7. The Government has gone through the case records. The gold was not properly declared under section 77 of the Customs Act, 1962 and therefore confiscation of the gold is justified. However, the facts of the case state that the Applicant had not cleared the Green Channel. The impugned gold was carried by the applicant and recovered from his person and it was not indigenously concealed. Import of gold is restricted not prohibited. The ownership of the gold is not disputed. 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 ^{ACQUITTED CASE} 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 more a lenient view can be taken in the matter. The Applicant has pleaded for re-export of the gold on redemption 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. The impugned gold weighing 104 gms valued at Rs. 2,58,458/- (Rupees Two Lakhs Fifty eight thousand Four hundred and Fifty eight) is allowed to be redeemed for re-export on payment of redemption fine of Rs. 1,05,000/- (Rupees One lakh Five 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. 26,000/- (Rupees Twenty six thousand) to Rs 21,000/- (Rupees Twenty one 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.

Ashok Kumar Mehta
21.8.18

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

ORDER No. ⁶⁶⁰/2018-CUS (SZ) /ASRA/MUMBAI,

DATED 31.08.2018

To,

Shri Sulthan Nafil Mohaideen
c/o M/s B. K. Associates
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ATTESTED

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

Copy to:

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

