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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. 373/226/B/14-RA / 1221

Date of Issue 23.02.2018

ORDER NO. 69/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 23.02.2018 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 Musthafa Rawther Nina Mohamed

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. 668/2014 dated 11.04.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri. Mohamed Musthafa Rawther Nina Mohamed against the order no C.Cus No. 668/2014 dated 11.04.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, an Indian National had arrived at the Chennai Airport on 02.02.2012. Examination of his baggage resulted in recovery of assorted gold rings weighing 300 gms valued at 8,49,900/-, these gold rings were disguised as metal hooks connecting the handles of two handbags. Apart from the above, the officers also recovered 3 bottles Johnny Walker Black Label Whisky 1ltr, 3 cartons of Benson and Hedges Cigarettes and two brown and black ladies hand bags used for concealing the afore mentioned gold. The Original Adjudicating Authority, vide his order 741/2013 dated 04.11.2013 absolutely confiscated all the goods and the gold referred to above. A Penalty of Rs. 2,00,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant.

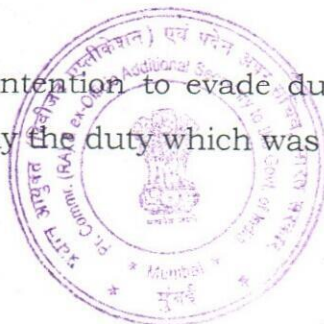
3. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals) Chennai, vide his interim order directed the Applicant to pay 50% ie 1,00,000/- of the penalty amount. As the amount was not paid, vide Order in Appeal C.Cus No. 668/2014 dated 11.04.2014 rejected the Appeal for non compliance of section 129E of the Customs Act, 1962.

4. 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 He had purchased the gold from his own earnings and not for any third party.

4.3 He had had no intention to evade duty and also requested the officers to allow him to pay the duty which was not permitted.



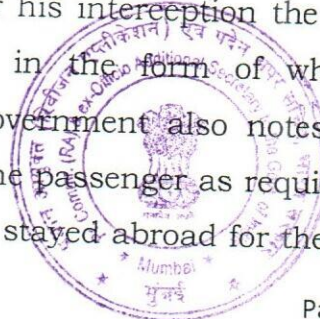
4.4 The respondent has passed an order stating that as the Applicant is a carrier, the gold cannot be redeemed on payment of redemption fine. Whereas under section 125 of the Customs Act, even when confiscation is authorized, gives it to the owner and where such owner is not known to the person from whose possession or custody such goods have been seized.

4.5 There is no provision in the Customs Act which made it mandatory to confiscate absolutely. Section 125 it is open for the Authority to give an option for redemption against payment of fine or he will be put to irreparable loss and great hardship.

The Revision Applicant cited various assorted judgments in support of re-export even when the gold was concealed his case, and prayed for permission to re-export the gold 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 that the gold was converted into white metal hooks and used to connect the handles of two ladies hand bags. The gold was concealed ingeniously with the intention to hoodwink the customs authorities. This clearly indicates that the Applicant had no intention of declaring the gold to the authorities and if he was not intercepted before the exit, the Applicant would have taken out the gold bar without payment of customs duty. In his statement recorded after his interception the Applicant has also accepted having disguised the gold in the form of white metal hooks/rings to evade paying Customs duty. Government also notes that the assorted gold hooks/rings were not declared by the passenger as required under Section 77 of the Customs Act, 1962. He has not stayed abroad for the requisite



period of six months and therefore not an eligible passenger to import gold. Secondly, the Applicant is a habitual offender as he was arrested earlier for trying to import gold illegally and travelling on another passport impersonating some other person, the said case is still pending. Government also notes that the Applicant having travelled earlier and involved in similar instances of smuggling is well aware of the Rules. In view of the above mentioned observations the Government is inclined to agree with the Order in Appeal. The impugned gold needs to be confiscated absolutely and the Revision Application is liable to be rejected.

7. Taking into consideration the foregoing discussion, Government upholds the Order in Appeal 668/2014 dated 11.04.2014.

8. Revision Application is dismissed.

9. So, ordered.

(ASHOK KUMAR MEHTA)

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

ORDER No. 69/2018-CUS (SZ) /ASRA/MUMBAI

DATED 23.02.2018

To,

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

True Copy Attested

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23/2/18

एस. आर. हिरुलकर
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.

