



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/79/B/2018-RA / 200

Date of Issue 20.11.2018

ORDER NO. 814/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 18.09.2018 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 Sahul Hameed Segu Mohamed

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. 165/2017 dated 06.09.2018 passed by the Commissioner of Customs (Appeals-I), Chennai.

ORDER

This revision application has been filed by Shri Sahul Hameed Segu Mohamed (herein referred to as Applicant) against the Order in Appeal C. Cus-I No. 165/2017 dated 06.09.2018 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 24.12.2016. He was intercepted when proceeding towards the exit after clearing the Green Channel and examination of his person resulted in the recovery of two gold bars and ten gold coins totally weighing 280 gms valued at Rs. 7,66,840/- (Rupees Seven lakhs Sixty six thousand Eight hundred and Forty). The gold was recovered from the pant pocket of the Applicant.

3. After due process of the law vide Order-In-Original No. 23/2017-18-AIRPORT dated 16.11.2017 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 of the gold on payment of 3,00,000/- as redemption fine and imposed penalty of Rs. 75,000/- under Section 112 (a) of the Customs Act,1962. A penalty of Rs. 5,000/- under Section 114AA of the Customs Act,1962

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) application who vide Order-In-Appeal C. Cus No. 165/2017 dated 06.09.2018 set aside the penalty imposed under Section 114AA of the Customs Act,1962 and reduced the redemption fine to Rs. 1,90,000/- and partially allowed the Appeal of the Applicant.

5. 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; The Applicant maintains that he brought the gold for his family and was willing to pay appropriate duty however the officers detained the gold for adjudication; The total of redemption fine, Penalty and the duty of 36.05% comes to Rs. 6,56,445/-, and therefore the adjudication authority had levied redemption fine and penalty more than the duty amount; The Hon'ble Supreme Court (full bench)in the case of Om Prakash vs UOI states that the main object of the enactment of the said Act was the recovery of Excise Duties and not really to punish for infringement of its provisions.

4.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing re-export of the gold on payment of nominal redemption fine and reduced personal penalty.

5. A personal hearing in the case was held on 25.09.2018, the Advocate for the respondent Shri Palanikumar attended the hearing. He re-iterated the submissions filed in Revision Application and submitted that the revision application be decided on merits. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. It is a fact that the gold was not declared 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 was intercepted at the attempted to exit the Green Channel. The gold is claimed by the Applicant and there is no other claimant. The gold was kept in by the Applicant in his pant pocket and it was not ingeniously concealed. There are no previous offences registered against the Applicant. 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 Original Adjudicating Authority has rightly allowed the gold to be redeemed on redemption fine and penalty for re-export. The Commissioner (Appeals) has rightly reduced the reduced redemption fine imposed on the Applicant and set aside the penalty under section 114AA of the Customs Act, 1962. The Applicant has requested for reduction of penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified and the confiscated gold is liable to be allowed for redemption on higher redemption fine and lower penalty.

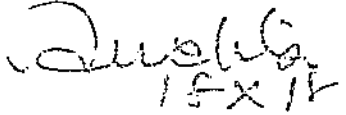
9. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold for re-export in lieu of fine. The redemption fine of Rs. 1,90,000/- (One lakh Ninety thousand) for redeeming the gold weighing 280 gms valued at Rs. 7,66,840/-

373/79/B/2018-RA

(Rupees Seven lakhs Sixty six thousand Eight hundred and Forty) is increased to Rs. 2,80,000/- (Rupees Two lakhs Eighty thousand). The penalty of Rs. 75,000/- (Seventy five thousand) imposed on the gold is reduced to Rs.50,000/- (Rupees Fifty thousand).

10. The impugned Order in Appeal stands modified to that extent. Revision application is partly allowed on above terms

10. So, ordered.



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

ORDER No. 819/2018-CUS (SZ) /ASRA/

DATED 18-09.2018

To,

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

Copy to:

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