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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. 373/167/B/14-RA/1274

Date of Issue 09.03.2018

ORDER NO. 84/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 28.02.2018 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 CHO

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 No. 1787/2013 dated 05.12.2013 passed by the Commissioner of Customs (Appeals), Chennai.

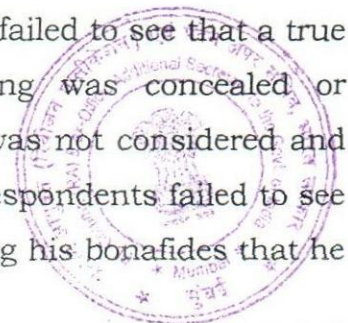


ORDER

This revision application has been filed by Shri CHO (herein referred to as Applicant) against the order no 1787/2013 dated 05.12.2013 passed by the Commissioner of Customs (Appeals), Chennai. The applicant has filed the application for condonation of delay of 20 days which has come up for hearing along with the Revision Application. The Advocate for the Revision Applicant has submitted that the Order in Appeal was issued on 05.12.2013 and was received by the Revision applicant on 04.01.2014. The same was immediately handed over to his counsel for preparing the Revision Application. However due to a case file mixup in the counsel's office the same could not be prepared and filed on time. Government observes that the delay has not occurred due to a lapse on the part of the Revision Applicant, if the delay is not condoned the Revision Applicant will be put to an irreparable loss. In the interest of justice the Government is therefore inclined to condone the delay. In view of the above the Government condones the delay and proceeds to decide the Revision Application on Merits.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 17.06.2013. On arrival the Applicant was intercepted at the Green Channel while attempting to exit without baggage declarations at the Red Channel. Examination of his baggage and person resulted in the recovery of 4 gold chains (89.9gms) and a gold bar (31gms) both totally weighing 120.9 gms totally valued at Rs. 3,15,478/-. After due process of the law vide Order-In-Original No. 707/ Batch C dated 17.06.2013 the Original Adjudicating Authority ordered confiscation of the impugned gold under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act. The Original Adjudicating Authority allowed redemption of the gold bangles on payment of a fine of Rs. 1,60,000/- and also imposed penalty of Rs. 32,000/- under Section 112 (a). Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C.Cus No. 1787/2013 dated 05.12.2013 rejected the appeal of the applicant.

4. The applicant has filed this Revision Application interalia on the following grounds that the order of the appellate authority is bad in law, weight of evidence and probabilities of the case; that both the Respondents failed to see that a true declaration was made by the Applicant and nothing was concealed or misdeclared; that the request for re-export of the gold was not considered and the value adopted is on the higher side; that both the Respondents failed to see that the Applicant had opted for the Red Channel proving his bonafides that he



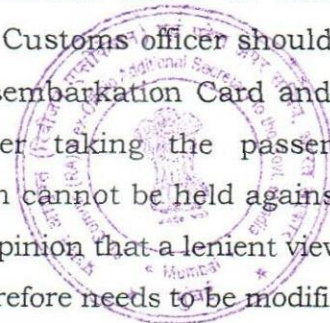
has got dutiable goods. However the officers have totally ignored this and registered a case against the Applicant; that both the Respondents have ignored orders of the High Court and Government of India allowing re-export of the goods in similar matters.

The Revision Applicant prays that the Hon'ble Revision Authority may be pleased to set aside both the lower authorities orders and set aside penalty of Rs. 33,000/- and fine of Rs. 1,60,000/- and order for re-export of the same and thereby render justice.

5. A personal hearing in the case was scheduled to be held on 14.02.2018, the Advocate for the respondent Shri K. Mohammed Ismail in his letter dated 12.02.2018 informed that his clients are unable to send their counsel all the way to Mumbai from Chennai and requested that the personal hearing may be waived and the grounds of the Revision Application may be taken as arguments for this Revision, and decide the cases as per relief sought for in the prayer of the Revision and oblige. Nobody from the department attended the personal hearing. The Revision Applicant prays that the Hon'ble Revision Authority may be pleased to set aside both the lower authorities order and pass such other consequential orders and thereby render justice.

6. The Government has gone through the facts of the case. The Applicant is a frequent traveller and a written declaration of gold was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and had he not been intercepted he would have gone without paying the requisite duty, 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 exit. This is the first offence of the Applicant. The gold was recovered from his person and there is no allegation that the gold was ingeniously concealed. 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, Government is of the opinion that a lenient view can be taken in the matter. The impugned Order in Appeal therefore needs to be modified.



8. Taking into consideration the foregoing discussion, the redemption fine in lieu of confiscation of the gold totally weighing 120.9 gms, valued at Rs. 3,15,478/- (Rupees Three lacs, Fifteen thousand and Four hundred and Seventy eight) is reduced from Rs. 1,60,000/- (One lac sixty thousand) to Rs...1,00,000/- (Rupees One lac) 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.32,000/- (Rupees Thirty two thousand) to Rs25,000/-(Rupees Twenty Five thousand) under section 112(a) of the Customs Act,1962. Customs Duty as applicable shall be paid as applicable under the Customs Act, 1962.

10. The impugned Order in Appeal 1787/2013 dated 05.12.2013 is modified as detailed above.

10. So, ordered.

(Signature)
28.2.12

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

ORDER No. 84/2018-CUS (SZ) /ASRA/MUMBAI

DATED 28.02.2018

To,

Shri. CHO
s/o Veerappan
Thenparai Melakadu,
Thenparai PO,
Mannargudi TK,
Tiruvarur Dt.,
Tamilnadu.

True Copy Attested

(Signature)
SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

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.

