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GOVERNMENT OF INDIA
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(DEPARTMENT OF REVENUE)

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F.No. 373/104/B/2018-RA | 2144

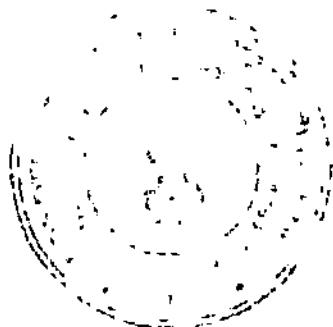
Date of Issue 29.11.2018

ORDER NO. ⁸⁷⁹/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 26.10.2018 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 Syed Mohammed Ali

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-I No. 37/2018 dated 19.03.2018 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Syed Mohammed Ali (herein after referred to as the Applicant) against the order no C. Cus No. 37/2018 dated 19.03.2018 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case is that the applicant, arrived at the Chennai Airport on 15.07.2017. He was intercepted by the officers as he attempted to walk through the exit after clearing Green channel without declaration. Examination of his baggage resulted in the recovery of 3 gold bars totally weighing 300 grams valued at Rs.8,33,100/- (Rupees Eight lakhs Thirty three One hundred). The gold bars were concealed in the hollow of the metallic bar kept in the baggage carried by the Applicant.

3. The Original Adjudicating Authority vide Order-In-Original No. 187/2017-18 Airport dated 22.12.2017 ordered for 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. 85,000/- under Section 112 (a) of the Customs Act. A penalty of Rs. 10,000/- was also imposed under Section 114AA of the Customs Act,1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C.Cus No. 37/2018 dated 19.03.2018 set aside the penalty of Rs. 10,000/- imposed under section 114AA of the Customs Act,1962 and partially allowed 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 bad in law, weight of evidence and probabilities of the case; Gold is not a prohibited item and according to liberalized policy can be released on redemption fine and penalty; The



Applicant was all along at the red channel under the control of the officers; The Adjudication authority has not exercised his option under section 125 of the Customs Act, 1962 that both the Respondents failed to see that a true declaration was made ; The Applicant had expressed his willingness to pay duty but the officers detained the gold for adjudication; The Applicant returned after a stay of 6 months abroad and is eligible for concessional rate of duty; 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; as per the Hon'ble High Court of Mumbai, in the case of Abdulla Kalingal Andu 1994 (719) 349 (Tri-Bom) Ownership of the gold is not a criterion for its eligibility to be imported by a passenger provided he satisfies the condition of stay abroad and those related to payment of duty, prosecution was quashed and gold and silver ordered to be returned.

5.2 The Revision Applicant prays that the Hon'ble Revision Authority may be pleased to set aside both the lower authorities orders and allow the gold for re-export on lesser redemption fine and penalty and thereby render justice.

6. 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 pleaded that the redemption fine and penalty be reduced. Nobody from the department attended the personal hearing.

7. The Government has gone through the case records it is observed that the Applicant had concealed the gold bar in the hollow of the metal pipe so as to avoid detection and evade Customs duty and smuggle the gold into India. The aspect of allowing the gold for re-export can be considered when imports have been made in a legal manner. This is not a simple case of mis-declaration. In this case the Applicant has blatantly tried to smuggle the gold into India in contravention of the provisions of the Customs, 1962. The said offence was committed in a premeditated and clever manner and clearly indicates mens rea and that the Applicant had no intention of declaring the gold to the authorities and if he was not intercepted before



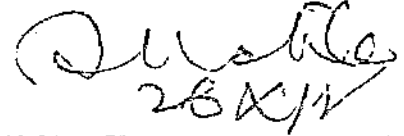
the exit, the Applicant would have taken out the gold bars without payment of customs duty.

8. The above acts have therefore rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed a penalty of Rs. 85,000/-. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.

9. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C. Cus-I No. 37/2018 dated 19.03.2018 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

10. Revision Application is dismissed.

11. So, ordered.



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

ORDER No. 879/2018-CUS (SZ) /ASRA/MUMBAI

DATED 26.10.2018

To,

Shri Syed Mohammed Ali
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), Custom House, Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

