



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/40/B/16-RA

2/60

Date of Issue 29.11.2018

ORDER NO. 910/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 31.10.2018 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 Mohamed Ghouse Shaik

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. 393 & 394/2015 dated 24.08.2015 passed by the Commissioner of Customs (Appeals) Chennai.

ORDER

This revision application has been filed by Shri Mohamed Ghouse Shaik (herein after referred to as the "Applicant") against the order in Appeal C.Cus-I No. 393 & 394/2015 dated 24.08.2015 passed by the Commissioner of Customs (Appeals) Chennai..

2. Briefly stated facts of the case are that the Applicant was intercepted at the Chennai International Airport on 07.07.2014 and a complete search of his baggage resulted in the recovery of six cut pieces of gold totally weighing 1701.6 grams valued at Rs. 43,76,992/- (Rupees Forty Three Lakhs Seventy six thousand Nine hundred and Ninety two). The gold was ingeniously concealed in two Vaseline containers recovered from his baggage.

3. The Original Adjudicating Authority, vide its Order in Original No. 234/30.03.2015 confiscated the impugned gold bars, under Section 111 (d) and e, (l), (m) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, 1992, but allowed redemption of the same on payment of Rs. 21,50,000/- as redemption fine and imposed a penalty of Rs. 4,50,000/- under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by this order the Applicant as well as the department filed an appeal with the Commissioner (Appeals). Commissioner of Customs (Appeals) Chennai, vide his Order-in-Appeal C. Cus-I No. 393 & 394/2015 dated 24.08.2015 set aside the order in original and ordered absolute confiscation and the rejected the Appeal of the Applicant.

5. Aggrieved with the above order the Applicant has filed this revision application alongwith an application for condonation of delay of 2 months 25 days on account of illness interalia on the grounds that.

5.1 the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; Applicant had not crossed the Customs barrier and as such the import had not been completed; The Applicant is an eligible passenger for import of gold on concessional rate; There was no ingenious concealment of the gold and the gold was kept in empty Vaseline containers; Gold is not prohibited but restricted; The Applicant had retracted the statements and had produced valid bills for purchase of the gold; After consideration of the ownership of the gold, the re-export was ordered on payment of redemption fine; The Appellate authority has failed to note that the applicant is an eligible passenger for importing 5 kg of gold with 1 kg. on concessional duty and the rest on baggage rate of duty; As the Applicant was eligible to import gold it was mandatory under Section 125 of the Customs Act, 1962 to release

the gold on redemption fine and considering the above the adjudicating has rightly exercised his discretion; Ingenious concealment would mean that the person has concealed the gold which has to be retrieved only by special tools or machineries; Applicant had not crossed the Customs barrier and as such the import had not consummated; the Apex court in the case of Hargovind Das vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has pronounced that the quasi judicial authorities should use the discretionary powers in a judicious and not an arbitrary manner and option to allow redemption is mandatory; The Appellate authority ought not to have set aside the order in original when gold is not prohibited and the passenger is eligible for concessional duty;

5.3 The Revision Applicant cited judgments in support of his case and prayed for release of the gold and set aside the personal penalty and thus render justice.

6. A personal hearing in the case was held on 25.10.2018, the Advocate for the respondent Shri A. Ganesh attended the hearing. He re-iterated the submissions filed in Revision Application and pleaded that the Order in Appeal be set aside and the order in original be upheld and the gold be allowed for re-export on redemption fine and penalty. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. In the rest of justice the delay of 2 months 15 days is condoned. 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.

8. The Government has gone through the case records it is observed that the gold recovered from two Vaseline containers from the baggage of the Applicant. The facts of the case reveal that the gold was recovered after removing some the vaseline containers. It is clear that the concealment was planned so as to avoid detection and evade Customs duty and smuggle the gold into India. Government also notes that the Applicant in his statement recorded immediately after the seizure has admitted that the gold was given to him by another person to be brought into the country for monetary consideration. 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 by concealing the gold in order to hoodwink the Customs Officers. The bill produced is an attempt to secure the release the gold. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and that the Applicant had no intention of declaring the gold and the entire charade



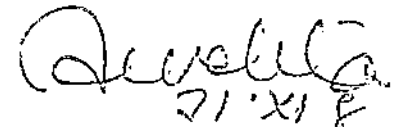
has been undertaken to evade customs duty and if he was not intercepted before the exit, the Applicant would have taken out the gold without payment of customs duty.

9. 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 Appellate authority has rightly confiscated the gold absolutely and upheld the penalty. The impugned Revision Application is therefore liable to be dismissed

10. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C.Cus-I No. 393 & 394/2015 dated 24.08.2015 passed by the Commissioner of Customs (Appeals-I) Chennai is upheld as legal and proper.

11. The impugned Revision Application is dismissed.

12. So, ordered.



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

ORDER No. ⁹¹⁰/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 31.10.2018

To,

Shri Mohamed Ghouse Shaik
C/o A. Ganesh, Advocate,
F. Block 179, IV Street,
Annanagar,
Chennai - 600 102.

Copy to:

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