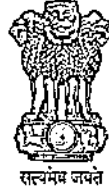


REGISTERED
SPEED POST

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

F.No. 373/196/B/16-RA

12/04

Date of Issue

29.11.2018

ORDER NO. 915/2018-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 Gulam Kader Hanifa

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. 242/2016 dated 30.05.2016 passed by the Commissioner of Customs (Appeals) Chennai.

ORDER

This revision application has been filed by Shri Gulam Kader Hanifa (herein referred to as Applicant) against the Order in Appeal C. Cus-1 No. 242/2016 dated 30.05.2016 passed by the Commissioner of Customs (Appeals) Chennai.

2. Briefly stated the facts of the case are that the applicant arrived at the Chennai Airport on 15.09.2015. He was intercepted at the exit of the arrival hall after clearing the green channel and examination of his person and baggage resulted in the recovery of two gold kadas weighing 583 grams valued at Rs. 15,35,039/- (Rupees Fifteen lakhs Thirty Five thousand and Thirty Nine). Apart from the above the Applicant had brought Two Lenovo Laptops, Four HTC phones totally valued at Rs. 94,000/- (Rupees Ninety Four thousand) and 26 cartons of gold cigarettes totally valued at Rs. 21,200/- (Rupees Twenty one thousand, two hundred). The gold kadas were worn on the ankles beneath the pants worn by the Applicant.

3. After due process of the law vide Order-In-Original No. 393/2015-16 – AIRPORT dated 05.01.2016 the Original Adjudicating Authority ordered absolute confiscation of the gold and the cigarettes under Section 111 (d) and e, (l), (m) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, and allowed redemption of the other items valued at Rs. 94,000/- on redemption fine of Rs. 94,000/- imposed penalty of Rs. 2,00,000/- under Section 112 (a) 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 No. 242/2016 dated 30.05.2016 rejected 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 Commissioner (Appeals) is contrary to the law, weight of evidence and violates the principles of natural justice; The Applicant had proceeded toward the Red channel; Applicant had not crossed the Customs barrier and as such the import had not consummated; The Applicant was not allowed to declare the goods under section 77 of the Customs Act,1962; Baggage is not confined to merely bonafide baggage within the meaning of Section 79 of the Customs Act,1962; ; the margin of profit works out to Rs. 3,500/- as per market value of gold @Rs. 3085/-;

Y

The cigarettes are also freely importable and should not have been absolutely confiscated; The 100 % redemption fine indicates that the lower authority has not arrived at the margin of profit to impose the fine; The lower authority ought to have seen that gold is not a prohibited item and the non-consideration of Section 125 of the Customs Act, 1962 is against the law and it is mandatory to release the gold on redemption fine: Gold is not prohibited as per EXIM policy;

5.2 The Revision Applicant prayed for setting aside the impugned order in Appeal and cited various assorted judgments in support of allowing the gold for re-export on payment of nominal redemption fine and reduced personal penalty.

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 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. It is a fact that the gold and the other impugned items were 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. However, the facts of the case state that the two gold kadas recovered were concealed by wearing the same on ankle beneath the pant, which clearly shows the malafied intention of the Applicant to evade custom duty. The Applicant had already passed through the green channel as worn on the person by the Applicant and it was not ingeniously concealed. The gold is claimed by the Applicant and there is no other claimant. There are no previous offences registered against the Applicant. Gold is restricted but not prohibited. Considering the above facts of the case and as 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 opines that absolute confiscation of the gold is harsh and unjustified and therefore absolutely seized goods can be released on appropriate redemption fine and penalty. lenient view can be taken in the matter. The Applicant has pleaded for redemption of the cigarettes and gold for re-export on fine and penalty and reduction of fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

10. The Government sets aside the absolute confiscation of the gold and cigarettes. The impugned gold weighing 583 grams valued at Rs. 15,35,039/- (Rupees Fifteen lakhs Thirty Five thousand and Thirty Nine) is allowed to be redeemed for re-export on payment of

redemption fine of Rs. 6,00,000/- (Rupees Six lakhs) under section 125 of the Customs Act, 1962. The impugned cigarettes valued at Rs. 21,200/- (Rupees Twenty one thousand, two hundred) is also allowed to be redeemed on payment of Rs. 8,000/- (Rupees Eight thousand). The redemption fine imposed on four HTC mobiles Valued at Rs. Rs. 94,000/- (Ninety four thousand) is reduced from Rs. 94,000/- (Ninety four thousand) to Rs. 50,000/- (Rupees Fifty thousand) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 2,00,000/- (Rupees Two lakhs) to Rs. 1,50,000/- (Rupees One lakh Fifty thousand) under section 112(a) of the Customs Act, 1962.

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

12. So, ordered.



(ASHOK KUMAR MEHTA)

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

ORDER No. ⁹¹⁵/2018-CUS (SZ) /ASRA/MUMBAI

DATED 31.10.2018

To,

Shri Gulam Kader Hanifa
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.