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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. 373/47/B/16-RA | १२०१

Date of Issue

ORDER NO. ११४/2018-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 K. P. Shamsher

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. 688/2015 dated 30.10.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

ORDER

This revision application has been filed by Shri K. P. Shamsher (herein referred to as Applicant) against the order C. Cus I No. 688/2015 dated 30.10.2015 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 31.01.2014. Examination of his baggage and person resulted in the recovery of one gold piece totally weighing 1000 grams valued at Rs. 29,85,000/- (Rupees Twenty Nine lakhs Eighty five thousand). The Gold was ingeniously concealed in a tie tied around the waist and covered with his inner wear.

3. After due process of the law vide Order-In-Original No. 158/24.06.2015 the Original Adjudicating Authority ordered absolute confiscation of the 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. 2,50,000/- under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 688/2015 dated 30.10.2015 rejected the appeal of the applicant.

5. The applicant has filed this Revision Application interalia on the following grounds alongwith a condonation of delay Application pleading condonation of late filing of the Revision Application by 20 days that

5.1 The order of the lower authority is contrary to the law, weight of evidence and violates the principles of natural justice; The Applicant had not crossed the Customs barrier and therefore the import is not completed; The Applicant is an eligible passenger and he had orally declared the gold but the officers refused to accept and proceeded to book the case; There is no hard and fast rule as to how the gold is kept, no person will bring the gold in hand it is always kept in checked in baggage, hand baggage or on person; The Applicant was well within the Customs area when he was intercepted and he did not cross the exit gate; The lower authority should have asked for the source of purchase; 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 lower authority ought to have seen that gold is not a prohibited item and the Applicant being a eligible person 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; the lower authority should not have rejected the re-export on payment of redemption fine and should not have imposed higher penalty.

5.2 The Revision Applicant cited various other cases in support of his case prayed that the Hon'ble Revision Authority may please set aside the order in Appeal and permit re-export of the gold in the interest of justice.

5. A personal hearing in the case was scheduled to be held on 25.10.2018, the Advocate for the respondent Shri A. Ganesh attended the hearing, he reiterated the submissions filed in Revision Application and pleaded for setting aside the order in appeal and allow the revision application.

6. The Government has gone through the case records, in the interest of justice the delay in filing the Revision Application by 20 days is condoned. It is observed that the gold bar was were indigenously concealed in a tie tied around the waist and covered with his inner wear. The concealment was planned 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 and has been properly declared as per Section 77 of the Customs Act, 1962. 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 Act, 1962. 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 to the authorities and if he was not intercepted before the exit, the Applicant would have taken out the gold pieces without payment of customs duty.

7. 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. 2,50,000/-. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.

8. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C. Cus I No. 688/2015 dated 30.10.2015 passed by the Commissioner of Customs (Appeals-I), Chennai is upheld as legal and proper.

9. Revision Application is dismissed.

10. So, ordered.



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

ORDER No. 918/2018-CUS (SZ) /ASRA/MUMBAI, DATED 31.10.2018

To,

Shri K. P. Shamsher
C/o A. Ganesh, Advocate,
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Annanagar,
Chennai - 600 102.

Copy to:

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