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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. 373/122/B/16-RA

349

Date of Issue 12/12/2018

ORDER NO. 1018/2018-CUS (SZ) / ASRA / MUMBAI/ DATED-30.11.2018 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 Fawmy

Respondent : Commissioner of Customs, Bangalore.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus-I No. 183/2016 dated 15.03.2016 passed by the Commissioner of Customs (Appeals), Bangalore.

ORDER

This revision application has been filed by Shri Mohamed Fawmy (herein referred to as Applicant) against the Order in Appeal C. Cus-I No. 183/2016 dated 15.03.2016 passed by the Commissioner of Customs (Appeals), Bangalore.

2. Briefly stated the facts of the case are that the applicant a Sri Lankan citizen, arrived at the Bangalore Airport on 04.06.2014. He was intercepted as he was trying to pass through the green channel and examination of his baggage resulted in the recovery of one gold chain and one gold bracelet totally weighing 305.9 gms valued at Rs. 8,29,906/- (Rupees Eight lakhs Twenty nine thousand Nine Hundred and six). The gold was worn by the Applicant.

3. After due process of the law vide Order-In-Original No. 122/2014 dated 05.06.2014 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) and e, (l), (m) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 83,000/- under Section 112 (a) of the Customs Act,1962. A penalty of Rs. 42,000/- 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) application who vide Order-In-Appeal C. Cus-I No. 183/2016 dated 14.03.2016 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 Appellate authority is liable to be set aside for the following facts reasons and grounds; The Applicant had come to India to attend the wedding of a close relative and the gold items seized was by any standard normal gold jewelry; The gold jewelry was not hidden or secreted; Absolute confiscation was not merited in the absence of any conscious or deliberate attempt to conceal the gold; Gold is not prohibited and the Adjudicating Authority should have allowed it to be redeemed on redemption fine and penalty; The gold seized was well within permissible limits; Every case of gold import notwithstanding violation of baggage rules cannot be viewed as smuggling and against this background the absolute confiscation of the goods does not pass the law and is liable to be set aside;



The non-declaration of the items was due to the bonafide belief and there was no intent of evading customs duty; In view of the aforesaid the applicant respectfully pleads for leniency as regards to imposition of redemption fine and penalty.

4.2 The Revision Applicant cited case laws in his defense and prayed for a lenient view in the matter.

5. A personal hearing in the case was scheduled to be held on 03.09.2018, 09.10.2018, and 16.10.2018. However neither the Applicant nor his advocate responded or attended the personal hearing. The case is therefore being taken up exparte on merits.

6. The Government has gone through the facts of the case. A written declaration of gold was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the gold is justified.

7. However, the facts of the case do not allege that the Applicant had cleared the Green Channel. There is no allegation that the impugned gold was indigenously concealed in fact the gold was worn by the applicant. Import of gold is restricted not prohibited. The Applicant has no past history of such misdemeanors. The ownership of the gold is not disputed. 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, moreso because he is a foreigner.

8. 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 is of the opinion that absolute confiscation of the gold is harsh and unjustified and therefore, a lenient view can be taken in the matter. The Applicant has pleaded for redemption of the gold for re-export on payment of redemption fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal is therefore liable to be set aside. Government however holds that



when penalty is imposed under section 112 no penalty is required to be imposed under section 114AA of the Customs Act,1962 for the same offence. The penalty imposed under section 114AA of the Customs Act,1962 therefore is required to be set aside.

9. The Government sets aside the absolute confiscation of the gold. The impugned gold totally weighing 305.9 gms valued at Rs. 8,29,906/- (Rupees Eight lakhs Twenty nine thousand Nine Hundred and six) is allowed to be redeemed for re-export on payment of redemption fine of Rs. 3,00,000/- (Rupees Three lakhs) under section 125 of the Customs Act, 1962. Government observes that the facts of the case justify reduction in the penalty imposed. The penalty of Rs. 83,000/- (Rupees Eighty three thousand) is reduced to Rs.60,000/- (Rupees Sixty thousand) under section 112(a) of the Customs Act,1962. The penalty of Rs. 42,000/- (Rupees Forty two thousand) imposed under section 114AA of the Customs Act,1962 is set aside.

10. Revision application is allowed on above terms.

11. So, ordered.

(Signature)
30.11.18

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

ORDER No. ¹⁰¹⁸ /2018-CUS (SZ) /ASRA/MUMBAI

DATED 30-11-2018

To,

Shri Mohamed Fawmy
C/o Pradyumna G. H., Advocates
No. 371, 8th Main Road,
Sadashivanagar,
Bangalore - 560 080.

ATTESTED

(Signature)
12.12.18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner of Customs, Kempegowda International Airport, Bangalore.
2. The Commissioner of Customs (Appeals), C. R. Building, Bangalore.
3. Sr. P.S. to AS (RA), Mumbai.
- ✓ 4. Guard File.
5. Spare Copy.

