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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. 373/187/B/16-RA

Date of Issue 13/12/2018

ORDER NO. ¹⁰³⁸ /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 Mandraj Supayah

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal C. Cus
No. 279/2016 dated 06.07.2016 passed by the
Commissioner of Customs (Appeals), Chennai..

ORDER

This revision application has been filed by Shri Mandraj Supayah (herein referred to as Applicant) against the Order in Appeal C. Cus No. 279/2016 dated 06.07.2016 passed by the Commissioner of Customs (Appeals), Chennai .

2. Briefly stated the facts of the case are that the applicant a Malaysian citizen, arrived at the Chennai Airport on 29.04.2014. He was intercepted as he was trying to pass through the green channel and examination of his baggage resulted in the recovery of four gold chains totally weighing 590 gms valued at Rs. 15,44,620/- (Rupees Fifteen lakhs Forty four thousand Six Hundred and Twenty). The gold was recovered from the pockets of the pants worn by the Applicant.

3. After due process of the law vide Order-In-Original No. 839/2015-AIR dated 26.01.2016 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. 1,50,000/- 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 C. Cus No. 279/2016 dated 06.07.2016 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 contrary to the law and probabilities of the case; The Commissioner (Appeals has erred in confiscating the four gold chains; The statement given by the Applicant was withdrawn the very next day; applicant had not attempted to import any of the goods in contravention of any rules and regulations; It is not known on what basis the Customs authorities have concluded that the above goods are sensitive; The applicant had not concealed the gold and it should be allowed for re-export; There is no violations of the provisions of the Customs Act and the Commissioner had arrived at a decision without application of mind; Irrelevant facts have been considered and relevant facts have been left out; The Commissioner has failed to act in a bonafide manner and therefore the order is tainted; The entire goods were declared as required under section 77 of the Customs Act; The penalty of Rs. 1,50,000/- is arbitrary and unreasonable; The goods are not prohibited and it is mandatory

for release on payment of fine as per section 125 of the Customs Act; The section 125 of the Customs Act, 1962 it is observed that in case of non-prohibited goods, held liable of confiscation shall be released on payment of fine the word shall makes it mandatory to impose fine in lieu of confiscation;

5.2 The Applicant submitted case laws in favor of his case and prayed for setting aside the Order in Appeal and allow the gold for re-export or pass further or other orders as deem fit and proper in the facts and circumstances of the case. 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.

5. A personal hearing in the case was scheduled in the case, the Advocate for the respondent Shri A. K Jayaraj Advocate for the Revision Applicant attended the hearing, he re-iterated the submissions filed in Revision Application and pleaded for a lenient view in the matter and the Revision Application be allowed.

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. The impugned gold was recovered from the pockets of the pants 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. Mere non-submission of the declaration cannot be held against the Applicant, moreso because he is a foreigner.

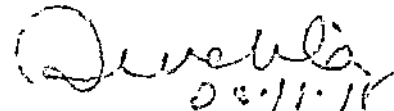
8. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. In view of the above facts, the Government is of the opinion that absolute confiscation of the gold is harsh 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.

9. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 590 gms valued at Rs. 15,44,620/- (Rupees Fifteen lakhs Forty four thousand Six Hundred and Twenty) 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. Government observes that the facts of the case justify reduction in the penalty imposed. The penalty of Rs. 1,50,000/- (Rupees One lakh fifty thousand) is reduced to Rs.1,20,000/- (Rupees One lakh Twenty thousand) under section 112(a) of the Customs Act,1962.

10. Revision application is allowed on above terms.

11. So, ordered.



(ASHOK KUMAR MEHTA)

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

ORDER No. ¹⁰³⁸ /2018-CUS (SZ) /ASRA/MUMBAI

DATED 13.11.2018

To,

Shri Mandraj Supayah
c/o M/s A.K. Jayaraj, Advocate
New No. 3, Old No. 2, 1st Floor,
Thambusamy Road,
Kilpauk, Chennai 600 010.

Copy to:

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