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F.No. 373/211/B/16-RA | 2387

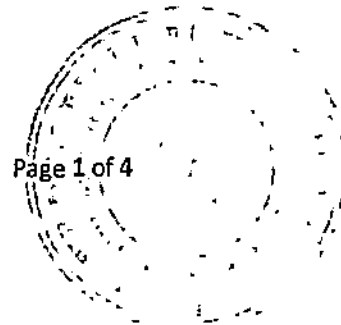
Date of Issue 13/12/2018

ORDER NO. ¹⁰⁴⁵ /2018-CUS (S Z) / 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 Mohammed Ashraf Usman

Respondent : Commissioner of Customs (Airport) Cochin .

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 73/2016 dated 15.07.2016 passed by the Commissioner of Customs (Appeals), Cochin.



ORDER

This revision application has been filed by Shri Mohammed Ashraf Usman (herein referred to as Applicant) against the Order in Appeal No. 73/2016 dated 15.07.2016 passed by the Commissioner of Customs (Appeals), Cochin.

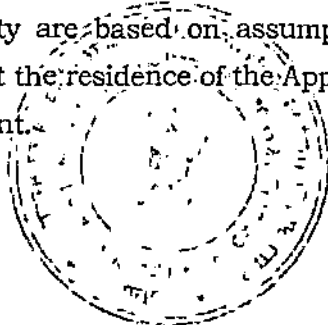
2. On 21.11.2015 the Applicant arrived at the Cochin Airport, he was intercepted as he was walking out through the exit gate. Examination of his person resulted in the recovery of one gold chain weighing 120 grams valued at Rs. 2,83,341/- (Rupees Two lakhs Eighty three thousand Three hundred and forty one). The gold chain was worn by the Applicant.

3. After due process of the law vide Order-In-Original No. 239/21.11.2015 the Original Adjudicating Authority ordered absolute confiscation of the gold chain under Section 111 (d) (l) and (m) of the Customs Act, 1962. and imposed penalty of Rs. 50,000/- under Section 112 (a) of the Customs Act, 1962 on the Applicant.

4. Aggrieved by the said order, the Applicant, filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 73/2016 dated 15.07.2016 rejected the appeal of the Applicant.

5. Aggrieved with the above order the Applicant, has filed this revision application interalia on the grounds that;

5.1 The order of the appellate authority is oppose to law, facts and circumstances of the case; The adjudication authority and the Appellate authority has lost sight of the important position of law; The personal hearing was not conducted properly and the findings of the adjudication authority and the Appellate authority has not assigned any reasons; The absolute confiscation of the gold has resulted in a serious miscarriage of justice and is contrary to law and against the natural principles of justice; The import of gold is permitted and gold is not prohibited; In liberalized regime the adjudication authority should have released the gold on redemption fine and penalty; absolute confiscation is unwarranted and as per section 125 of the Customs Act is very clear on release of the gold on redemption fine and penalty; The Hon'ble Supreme Court has held in various cases that the enactment of the Customs Act, 1962 is to generate revenue and not for punishment; The allegations made by the adjudication authority are based on assumptions and presumptions; The investigations made at the residence of the Applicant confirmed that the gold belonged to the Applicant.



5.2 The Applicant submitted case laws in favor of his case and prayed for setting aside the absolute confiscation of the gold and release the gold on reasonable redemption fine and penalty in the interest of justice.

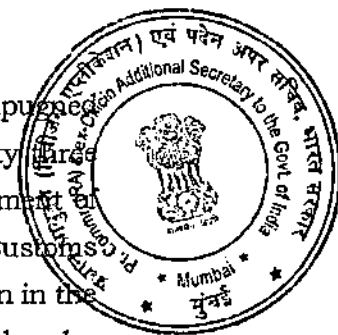
6. A personal hearing in the case was scheduled on 19.11.2018 in the case, the Advocate for the respondent Shri K.P.A. Shukoor, Advocate for the Revision Applicant attended the hearing, he re-iterated the submissions filed in Revision Application and pleaded that the order in Appeal be set aside and for a lenient view in the matter and the gold be released on on redemption fine and penalty.

7. Government has gone through the facts of the case, the respondent had attempted to import the gold without declaration as required under section 77 of the Customs Act, 1962 and therefore confiscation of the same is justified and upheld.

8. However, the facts of the case reveal that the gold chain was worn by the Applicant. The gold therefore cannot be considered as ingeniously concealed. Import of gold is restricted not prohibited. The ownership of the gold is not disputed. The Applicant has no past history of such misdemeanors. The gold chain is used and old and has been in usage by the Applicant for several years. The mere non-submission of the declaration cannot be held against the Applicant.

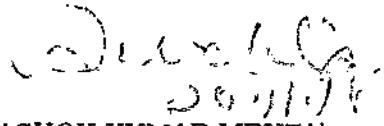
9. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. Further the Applicant in his application has submitted that he is eligible for importing gold on concessional rate, having stayed abroad for more than three years and visiting India only for short periods. In view of the above facts, the Government is of the opinion that absolute confiscation of the gold for non-declaration 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.

10. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 120 grams valued at Rs. 2,83,381/- (Rupees Two lakhs Eighty thousand Three hundred and Eighty one) is allowed to be redeemed on payment of redemption fine of Rs. 1,00,000/- (Rupees One lakh) under section 125 of the Customs Act, 1962. Government observes that the facts of the case justify the reduction in the penalty imposed. The penalty of Rs. 50,000/- (Rupees Fifty thousand) imposed under section 112(a) of the Customs Act, 1962 is reduced to Rs. 25,000/- (Rupees Twenty Five thousand)



11. The impugned Order in Appeal is modified as detailed above. Revision application is allowed on above terms.

12. So, ordered.


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

ORDER No. ¹⁰⁴⁵ /2018-CUS (SZ) /ASRA/MUMBAI

DATED 30.11.2018

To,

Shri Mohammed Ashraf Usman
c/o K. P. A. Shukoor, Advocate
Krishnaprasad building,
K. S. Road,
Hampankatta, Mangalore- 575 001.

Copy to:

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

