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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
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Mumbai-400 005

F.No. 373/234/B/15-RA | 3881 Date of Issue 13|12|2018

ORDER NO. 1052/2018-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 Rajinderan Karupaih

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. 339/2015 dated 29.06.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

ORDER

This revision application has been filed by Shri Rajinderan Karupaih (herein after referred to as the Applicant) against the order in appeal No. 339/2015 dated 29.06.2015 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case is that the applicant, a Malaysian citizen arrived at the Chennai International Airport on 06.02.2014. Examination of his baggage resulted in the recovery of twenty pieces of gold totally weighing 900 gms valued at Rs. 27,00,000/- (Rupees Twenty seven Lakhs). The gold bits were indigenously concealed in the drilling machines brought by the Applicant.

3. The Original Adjudicating Authority vide Order-In-Original No. 147/09.03.2015 ordered absolute confiscation of the impugned 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. 339/2015 dated 29.06.2015 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 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 springs 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. 2,50,000/- 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, 1962it is observed that in case of non-prohibited goods, held liable of confiscation shall be released on payment of fine ie 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.

6. 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.

7. The Government has gone through the case records it is observed that the gold bars were ingenously concealed in the gold springs were indigenously concealed in the two drilling machines brought by the Applicant. The concealment was planned so as to avoid detection and evade Customs duty and smuggle the gold into India. 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, 1962. The release on concessional rate of duty also cannot be entertained as the Applicant has not declared the gold as required under Section 77 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 without payment of customs duty.

8. 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. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.

9. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C. Cus. No. 339/2015 dated 29.06.2015 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

10. Revision Application is dismissed.

11. So ordered.

30.11.18

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

ORDER No. 1052/2018-CUS (SZ) /ASRA/Mumbai DATED 30.11.2018

To,

Shri Rajinderan Karupaih
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.