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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. 373/76/B/16-RA

Date of Issue 13/12/2018

ORDER NO. 1055/2018-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 Sreenivasula Reddy Mallu

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus-I No. 151/2016 dated 24.03.2016 passed by the Commissioner of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by Shri Sreenivasula Reddy Mallu (herein referred to as Applicant) against the Order in Appeal C. Cus-I No. 151/2016 dated 24.03.2016 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 14.10.2015. 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 bit weighing 178 gms valued at Rs. 4,33,309/- (Rupees Four lakhs Thirty three thousand Three Hundred and Nine).

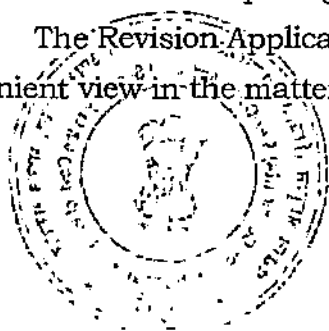
3. After due process of the law vide Order-In-Original No. 1151/2015 Batch C dated 14.10.2015 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) and e, (l), (m) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 44,000/- 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-I No. 151/2016 dated 24.03.2016 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 against the law, weight of evidence and probabilities of the case; The Applicant had produced proof of purchase which was ignored by the Adjudicating Authority; Gold is not prohibited and the Adjudicating Authority should have allowed it to be redeemed on redemption fine and penalty; On simple reading of Section 125 of the Customs Act,1962 it is clear that the option to redeem should have been extended and no discretion is vested with the adjudicating Authority, the absolute confiscation was therefore erroneous; As the question of non-declaration and consequent confiscation did not arise there was no reason for imposing penalty.

5.2 The Revision Applicant cited ^{relevant 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 15.11.2018. The Advocate for the applicant appeared for a personal hearing and submitted for a lenient view in the matter and prayed for setting aside the Order in Appeal and release the gold on redemption fine for re-export on reduced penalty in the interest of justice.

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. 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.

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 178 gms valued at Rs. 4,33,309/- (Rupees Four lakhs Thirty three thousand Three Hundred and Nine)) is allowed to be redeemed for re-export on payment of redemption fine of Rs. 1,50,000/- (Rupees One lakh Fifty thousand) 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. 44,000/- (Rupees Forty four thousand) is reduced to Rs. 30,000/- (Rupees Thirty thousand) under section 112(a) of the Customs Act, 1962.

10. The impugned Order in Appeal is modified as detailed above. Application is allowed on above terms.



11. So, ordered.

(Handwritten signature)
20.11.18

(ASHOK KUMAR MEHTA)

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

ORDER No. ¹⁰⁵⁵ /2018-CUS (SZ) /ASRA/MUMBAI

DATED 30.11.2018

To,

Shri Sreenivasula Reddy Mallu
S/o Mallem Konda Reddy
Godugunuru, Badvel M,
Kadapa Dt.
Andhra Pradesh.

Copy to:

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

