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

F.No. 373/195/B/16-RA

3164

Date of Issue 29.11.2018

ORDER NO. 906/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 31.10.2018 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 Pathan Nizam Khan

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 163/2016 dated 31.03.2016 passed by the Commissioner of Customs (Appeals-I) Chennai.

ORDER

This revision application has been filed by Shri Pathan Nizam Khan (herein referred to as Applicant) against the Order in Appeal C. Cus-I No. 163/2016 dated 31.03.2016 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 9.10.2014. He was intercepted as he was walking out of the green channel and examination of his person resulted in the recovery of a fourteen gold pieces chains weighing 1857 grams valued at Rs. 50,73,324/- (Rupees Fifty lakhs Seventy three thousand Three hundred and twenty four). The gold was kept concealed in the hollow portion of waist band of the jeans worn by the Applicant.

3. After due process of the law vide Order-In-Original No. 278/09.09.2015 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. 5,00,000/- 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 No. 163/2016 dated 31.03.2016 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 Commissioner (Appeals) is contrary to the law, weight of evidence and violates the principles of natural justice; Applicant had not crossed the Customs barrier and as such the import had not consummated; The Applicant had proceeded toward the Red channel; The Lower authority failed to see that the Applicant is an eligible passenger and he orally declared the gold to the Customs officers but it was not considered; The Applicant is an NRI and has been working in Kuwait for the past 12 years, which is evident on perusal of his passport; ; The Appellate authority has failed to note that the applicant is an eligible passenger for importing 5 kg of gold with 1 kg. on concessional duty and the rest on baggage rate of duty; The case law cited by the lower authority as in the Samynathan Murugesan's the gold was concealed in a TV cabinet; There is no rule as to where the gold can be

kept as no person will carry the gold in his hand, and concealment would mean that the gold can be retrieved only by the use of special tools or machinery; the Apex court in the case of Hargovind Das vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has pronounced that the quasi judicial authorities should use the discretionary powers in a judicious and not an arbitrary manner and option to allow redemption is mandatory; The Appellate authority ought not to have set aside the order in original when gold is not prohibited and the passenger is eligible for concessional duty.; The reasons given for not extending the section 125 is not sound and violates the principles of Natural justice; As the Applicant was eligible to import gold it was mandatory under Section 125 of the Customs Act, 1962 to release the gold on redemption fine and considering the above the adjudicating has not exercised his discretion.

5.3 The Revision Applicant cited various assorted judgments in support of allowing the gold for re-export on payment of nominal redemption fine and reduced personal penalty.

6. A personal hearing in the case was held on 25.10.2018, the Advocate for the respondent Shri A. Ganesh attended the hearing. He re-iterated the submissions filed in Revision Application and pleaded that the gold be allowed for re-export on redemption fine and penalty. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. It is a fact that the gold was not declared by the Applicant as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the gold is justified.

8. However, the facts of the case state that the gold was carried by the Applicant in the hollow portion of waist band of the jeans and the same though kept concealed was not ingeniously concealed. The gold is claimed by the Applicant and there is no other claimant, therefore the ownership of the gold is not disputed. There are no previous offences registered against the Applicant. Gold is restricted but not prohibited. There are no allegations that the Applicant tried to cross the green channel. 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 opines 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 fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

10. In view of the above, Government sets aside the absolute confiscation of the gold. The impugned gold weighing 1857 grams valued at Rs. 50,73,324/- (Rupees Fifty lakhs Seventy three thousand Three hundred and twenty four) is allowed to be redeemed for re-export on payment of redemption fine of Rs. 20,00,000/- (Rupees Twenty Lakhs Only) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 5,00,000/- (Rupees Five lakhs) to Rs. 4,50,000/- (Rupees Four Lakhs Fifty Thousand Only) under section 112(a) of the Customs Act, 1962.

11. The impugned Order in Appeal stands modified to that extent. Revision application is partly allowed on above terms

12. So, ordered.



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

ORDER No. 906/2018-CUS (SZ) /ASRA/MUMBAI

DATED 31.10.2018

To,

Shri Pathan Nizam Khan
C/o A. Ganesh, Advocate,
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Copy to:

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