REGISTERED

SPEED POST

F.No. 375/48/B/ 2016-RA

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING

6th FLOOR, BHIKAJI CAMA PLACE,

NEW DELHI-110 066

Date of Issue 14.8.2018

Order No. 123/18-Cus dated 13-8-2018 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. CC (A) Cus/ D-I/ Air/ 170/ 2016 dated 05.04.2016, passed by the Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi-110037

Applicant : Mr Kanagaraja Pillai Gopal Pillai

Respondent: Commissioner of Customs, NCH, New Delhi.

ORDER

A revision application no. 375/48/B/2016-RA dated 08.07.2016 is filed by Mr Kanagaraja Pillai Gopal Pillai, a resident of Malaysia (hereinafter referred to as the applicant) against the Order-in-Appeal no. CC (A) Cus/ D-I/ Air/ 170/ 2016 dated 05.04.2016, passed by the Commissioner of Customs (Appeals), NCH, New Delhi, whereby the applicant was allowed to re-export the gold ornaments *within three months* on payment of Redemption Fine of Rs. 2,87,000/- and penalty of Rs.2,87,000/-.

2. The revision application has been filed mainly on the grounds that redemption fine and penalty imposed in this case by the Commissioner (Appeals) are totally unwarranted as he himself has clearly held in his order that there is no misdeclaration of the gold ornaments on the part of the applicant, the goods were not brought for any commercial purpose and the gold ornaments are not prohibited goods.

3. Personal Hearing was held in this case on 05.07.2018 and it was availed by Sh. Rohit Kapur, advocate, who reiterated the above-mentioned grounds of revision. He also relied upon the Apex Court's decision dated 18.08.2017 in the case of DRI Vs. Pushpa Lekhumal Tolani in Civil Appeal No. 4403 of 2010. However, no one appeared for the respondent and no request for any other date of hearing was also received from which it is implied that the respondent is not interested in availing this hearing.

4. The Government has examined the matter and it is observed that the Commissioner (Appeals) has clearly admitted in his order that the gold ornaments are not prohibited goods, these were not imported for commercial purpose and the applicant had not mis-declared the importation of gold ornaments to the customs officers. But despite of having accepted the above factual position of the case, he has made a totally contradictory conclusion that the 600 gms of gold jewellery worn by the applicant is in commercial quantity and the applicant has violated the green channel procedure. However, he has not elaborated any basis by which the gold jewellery weighing 600 gms could be considered as commercial quantity when he has himself candidly accepted earlier that there is nothing on record to consider the said gold jewellery had been imported for any commercial purpose and there is no misdeclaration on the part of applicant in the light of Kerala High Court's decision in the case of Vigneswaran Sethuraman Vs. Union of India-2014 (308) ELT 394 (Ker). As regards the Commissioner (Appeal)'s observation that 600 gms of gold jewellery is a commercial quantity, it is evident that he has based his conclusion purely on the basis of quantity of the gold jewellery and not by considering other relevant factors like the origin of the applicant, his financial status, the period of use of jewellery and socio-cultural background of the applicant etc. Since the applicant is undoubtedly a Malaysian citizen and he did not bring the ornaments admittedly for any

commercial purpose, the Commissioner (Appeal)'s conclusion that 600 gms of jewellery is a commercial quantity is manifestly erroneous. The Commissioner (Appeal)'s other finding that the applicant had also violated the green channel procedure is also similarly incompatible to his own observation in para 5 of his order that there is no misdeclaration on the part of the applicant as he was not required to declare the gold jewellery under section 77 of the Customs Act, 1962. Accordingly, when the applicant did not have anything to hide and evade any duty of customs, the applicant had correctly opted for green channel for his exit and there is no basis for saying that the applicant had violated the green channel procedure. Considering these facts, the Government agrees with the applicant that the Commissioner (Appeals) has erroneously imposed redemption fine and penalty on the applicant while allowing re-export of the gold jewellery.

5. In view of the above discussion the Government set aside the Order-in-Appeal to the extent of imposing Redemption Fine and Penalty and allows the revision application.

13.8.18

(R.P.Sharma)

Additional Secretary to the Government of India

Mr Kanagaraja Pillai Gopal Pillai

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Jinjonj Uttra Kualalumpur

Th rough Attorney

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ATTESTED

13/8

(Ravi Prakash)

OSD (REVISION APPLICATION)

Order No. 123 /18-Cus dated 13-8-2018

Copy to:

1. Commissioner of Customs, NCH, Near IGI Airport, New Delhi-110037
2. The Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi-110037
3. Deputy/Assistant Commissioner of Customs, IGI Airport, Terminal-3, New Delhi.
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