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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

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F.No. 373/109/B/13-RA / 5513

Date of Issue 17.09.2020

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ORDER NO. 125/2020-CUS (SZ) / ASRA / MUMBAI / DATED 07.02.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

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Applicant : Shri. Selvadurai Ratna Rajah

Respondent : Commissioner of Customs(Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus No. 1285/2013 dated 19.09.2013 passed by the Commissioner of Customs (Appeals) Chennai.

ORDER

This revision application has been filed by Shri. Selvadurai Ratna Rajah against the order in Appeal no. C.Cus No. 1285/2013 dated 19.09.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, an Sri Lankan National had arrived at the Chennai Airport on 02.01.2013 and brought with him Two kilograms of silver granules valued at Rs. 1,08,270/- ( Rupees One lac Eight thousand two hundred and seventy). The Original Adjudicating Authority, absolutely confiscated the goods under Section 111 (d), (l), (m) and (o) of the Customs Act,1962. A penalty of Rs. 10,000/- ( Rupees Ten thousand ) under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals) Chennai, vide his order C. Cus No. 1285/2013 dated 19.09.2013 rejected the Appeal of the Applicant.

3. Aggrieved with the above order the Applicant has filed this revision application inter alia on the grounds that.

3.1 The order of the appellate authority is against law, weight of evidence and circumstances and probabilities of the case.

3.2 The Appellant was all along at the red channel under the control of the officers.

3.3 The goods must be prohibited for import, simply because of non-declaration goods cannot be held prohibited.

3.4 The Applicant is a foreign national and bonafide tourist and there are no earlier offences registered against him. The impugned silver should have been allowed re-export.

3.5 CBEC circular 9/2001 gives specific directions stating that a declaration should not be left blank, if not filled in the Officer should help the passenger to fill in the declaration card.

3.6 Even assuming without admitting that the Applicant did not declare the silver it is only a technical fault and the Applicant being a foreign national it should have been pardoned.

3.7 The adjudicating authority also failed to consider the margin of profit at the time of passing the order.

3.8 The Hon'ble Supreme Court has in the case of Om Prakash vs Union of India stated that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions; In the case Hargovind Das K. Joshi v/s Collector of Customs reported in 1992 (61) E.L.T. 172 (S.C.), The Apex Court has pronounced that a quasi judicial authority must exercise discretionary powers in judicial and not arbitrary manner and remanded the case back for consideration under section 125(1) of the Customs Act, 1962.

The Revision Applicant also cited various assorted judgments in support of his case, and prayed that the Hon'ble Revision Authority may please set aside the impugned order and allow re-export of the goods and reduce the redemption fine and penalty imposed on the Applicant and thus render justice.

4. ~~A~~ personal hearings in the case was scheduled to be held on 04.04.2016, 20.04.2016 and 05.05.2016. The Advocate for the respondent Shri Palanikumar vide his letter dated 19.05.2016 informed that the client is poor and could not afford to attend the said hearing and requested for passing of the order showing leniency and mercy.


5. The Government has gone through the facts of the case. The two kilograms of silver being brought is clearly in commercial quantity and therefore confiscation of the goods is justified. However, the Applicant is an Sri Lankan citizen and was not intercepted while trying to exit the Green Channel. There was no concealment of the goods, and neither is there any allegation that the Applicant attempted smuggling the goods into India. There are no previous offences registered against

the Applicant. Thus, mere non-submission of the declaration cannot be held against the Applicant moreso because he is a foreigner. The absolute confiscation is therefore is an order in excess. Government, therefore holds that a lenient view can be taken in the matter.

6. Taking into consideration the foregoing discussion, Government, sets aside the impugned order in Appeal. The goods valued at Rs. 1,08,270/- ( Rupees One lac Eight thousand two hundred and seventy) are allowed to be redeemed for re-export on payment of redemption fine of Rs. 55,000/- (Rupees Fifty five thousand). Government observes that the facts of the case justify the penalty of Rs. 10,000/- ( Rupees Ten thousand ) imposed. The penalty imposed on the Applicant is appropriate.

7. Revision application is allowed on above terms.

8. So, ordered.

  
 ( SEEMA ARORA )  
 Principal Commissioner & ex-officio  
 Additional Secretary to Government of India

ORDER No. <sup>125</sup> /2020-CUS (SZ) /ASRA/

DATED 27.8.2020

To,

Shri Selvadurai Ratna Rajah  
 118/40, St. Anthony's MW,  
 Old Nacombo,  
 Wattala, Sri Lanka.

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. S. Palanikumar, Advocate, No. 10, Sunkurama Chetty Street, Opp High court, 2<sup>nd</sup> Floor, Chennai 600 001.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.