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POST

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

F.No. 373/02/B/13-RA / 5399

Date of Issue 15.09.2020

ORDER NO. 130/2020-CUS (SZ) / ASRA / MUMBAI/ DATED 10.09.2020 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.

Applicant : Shri. Ibrahim Mehmood Ismail

Respondent : Commissioner of Customs(Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 166/2012 dated 28.09.2012 passed by the Commissioner of Customs (Appeals) Bangalore.



ORDER

This revision application has been filed by Shri. Ibrahim Mehmood Ismail against the order no 166/2012 dated 28.09.2012 passed by the Commissioner of Customs (Appeals) Bangalore.

2. Briefly stated facts of the case are that the applicant, had arrived at the Bangalore Airport on 22.04.2010. The Officers of Custom detained him on suspicion and the scrutiny of his checked in baggage resulted in the recovery of 123 carton of assorted cigarettes valued at Rs. 12,300/- (Rupees Twelve thousand three hundre) and 14 gold bracelets and 18 gold chains totally weighing 440 grams valued at Rs. 6,32,000/- (Rupees Six lacs Thirty two thousand) . The cigarettes were recovered from his checked in baggage and the gold was recovered from his person concealed in the stomach area behind his belt. The Original Adjudicating Authority, confiscated the goods and gold under Section 111 (d), (l), and (m) of the Customs Act,1962 and allowed redemption on payment of redemption fine of Rs. 2,75,000/- (Rupees Two lacs Seventy five thousand). A penalty of Rs. 1,00,000/- (Rupees One lac) under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant. A further penalty of Rs. 1,00,000/- (Rupees One lac) under section 114AA 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) Bangalore , vide his order No. 166/2012 dated 28.09.2012 rejected the Appeal of the Applicant.

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

3.1 The Mahazar states that the Applicant was moving in a suspicious manner, the factual position is that the Applicant, being illiterate had approached the customs officer for help in filling the declaration form; As the metallic objects carried on the body is easily



detected during body scan, it is inconceivable that anybody could conceal in such a manner; The cigarettes were brought by the Applicant for personal use, the excess could have been charged customs duty and released; The gold was exported to dubai for polishing and was being brought back to India; The Applicant is an eligible passenger to import gold on concessional rate of duty; The Applicant had no intention to evade duty and did not attempt to clear the goods by concealment;

3.2 The Revision Applicant also cited various assorted judgments in support of his case, and prayed that the order in appeal be set aside and /or reduce the redemption fine and penalty imposed on the Applicant and thus render justice.

4. Personal hearings in the case were scheduled to be held on 06.12.2017, 19.04.2018, and 29.08.2018. Nobody from the department or the Applicant attended the said hearings. The case is therefore being decided ex-parte.


5. The Government has gone through the facts of the case. The cigarettes being brought are clearly in commercial quantity. The gold also was not declared by the Applicant and he was intercepted while trying to exit the Green Channel without declaration therefore confiscation of the goods is justified. However, the Applicant is an NRI running a mutton shop in Dubai. Though the gold was concealed it cannot be termed as ingenious. Gold is restricted but not prohibited. The Original Adjudicating Authority, has rightly allowed redemption on payment of redemption fine and personal penalty. The Appellate authority has also rightly upheld the order of the Original Adjudicating Authority. The facts of the case justify the redemption fine imposed and the penalty imposed. The order of the appellate authority is therefore liable to be upheld.



6. Government upholds the order of the appellate authority. However, once penalty has been imposed under section 112(a) there is no necessity of imposing penalty under section 114AA. The penalty of Rs. 1,00,000/- (Rupees One lac) imposed under section 114AA of the Customs Act,1962 is set aside. The order of the Appellate Authority is accordingly modified to that extent.

7. Revision application is partly allowed on above terms.

8. So, ordered.


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

ORDER No. 30/2020-CUS (SZ) /ASRA/
 .2020

DATED 10.8.2020

To,

Shri Ibrahim Mehmood Ismail
 S/o Mohammed Ibrahim,
 PM mandir, Near GHS School,
 Sheriya, Post Sheriya, Village Kumble,
 Dt. Kasargod, Kerela Uppala, Kerala.

Copy to:

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

ATTESTED

B. LOKANATHA REDDY
 Deputy Commissioner (R.A.)

