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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. 373/15/B/16-RA/5805

Date of Issue 09.10.2020

ORDER NO. 169/2020 CUS (SZ)/ASRA/MUMBAI DATED 09.10.2020 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Misriral Nathmal

Respondent : Commissioner of Customs, Cochin International Airport.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. COC-CUSTM-000-APP-315-15-16 dated 08.12.2015 passed by the Commissioner of Customs (Appeals), Cochin.

ORDER

This revision application has been filed by Shri Misriral Nathmal (herein referred to as Applicant) against the order No. COC-CUSTOM-000-APP-315-15-16 dated 08.12.2015 passed by the Commissioner of Customs (Appeals), Cochin.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Misriral Nathmal at the exit gate of the Cochin International Airport on 24.01.2015. Examination of his person resulted in the recovery of gold links from his pockets weighing 99.76 grams valued at Rs. 2,49,223/- (Rupees Two lacs Forty nine thousand Two hundred and Twenty three).

3. After due process of the law vide Order-In-Original No. 24/2015 dated 24.01.2015 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 10,000/- (Rupees Ten thousand) under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by this order the Respondent filed an appeal with the Commissioner of Customs (Appeals), The Commissioner (Appeals) vide his order rejected the Appeal of the Applicant.

5. Aggrieved with the above order the Applicant has filed this revision application stating that the order of the Commissioner (Appeal) is not legal nor proper for the following reasons;

5.1 The order of the Appellate authority is unjust, unfair, against the weight of evidences, contrary to law, unreasonable, against the principles of natural justice and therefore not maintainable in law; The Appellate authority committed gross violation of the principles of the natural justice and therefore the order is required to be set aside.

5.2 The Appellate authority should have noted that there was no concealment of the gold jewelry as the same was admittedly carried by the applicant in the pocket of the garment worn by him just like any normal person.

5.3 Gold is not an item prohibited from import. The officers merely, upon the applicant declaring the gold, took over the gold and filled up the printed form and proceeded against him.

5.4 The original adjudicating order in para 3 mentioned Description of the goods as "crude gold links" and the lower appellate authority observes as "Crude", thus showing different description of the item seized by the authorities

5.5 The learned lower appellate authority committed gross error in recording the finding that the applicant had willfully engaged in smuggling gold and violated. the provision of sec.77 of the Customs Act,1962 and Foreign Trade(D&R Act,) 1992 when the facts on record is contrary to the said finding. The import of the gold/jewelry had been liberalized by the Government for the reason of which the absolute confiscation of the jewelry upheld by her is totally bad in law and by not establishing any criminal intent or negligence of defiance of law on the part of the applicant was in gross error in sustaining the penalty on him under Section 112 (a) of the Customs Act

5.6 The Appellate authority erred in not appreciating the reliance placed by the applicant on the Customs Notification bearing No 12/2012-Customs dated 17.12.2012, as if the applicant is seeking the benefit of the said notification so as to hold that the applicant herein is not eligible to the benefit of the said notification on account of non-fulfillment of the conditions imposed therein, by totally failing to understand that the fulfillment of the condition imposed in the said notification was only for the availment of the concessional rate of duty provided therein on the import of the gold/jewelry as an item of baggage which otherwise meant that there is no bar in allowing the jewelry on payment of the duty at the tariff rate without extending the benefit of the said Notification.

5.7 The Appellate authority committed gross error in not fairly exercising the judicial discretion conferred under Section 125 of the Customs Act by allowing the redemption of the jewelry on payment of appropriate duty at the tariff rate by levying a fine or at least the re-export of the said jewelry

5.8 The Revision Applicant stated that approving the highly excessive penalty is arbitrary and unreasonable and prayed for that the Appellate order be set aside and thus render justice.

6. A personal hearing in the case were scheduled on 09.12.2019. Shri N. Vishwanathan, Advocate attended the hearing on behalf of the Applicants. He reiterated his earlier submissions and asserted that the gold was declared verbally and not concealed. The only grounds in the original order is that the applicant is not eligible and that the order of the Commissioner (Appeals) alleges smuggling. He pleaded for re-export of the gold.

7. The Government has gone through the case records. It is observed that the respondent did not declare the gold as required under section 77 of the Customs, Act, 1962 and was intercepted at the exit gate, therefore the confiscation of the gold is justified.


8. The ownership of the gold is not disputed. Gold is a restricted item and its import is not prohibited. The gold was recovered from the pant pockets of the Applicant and there are no allegations that the gold was ingeniously concealed. There are no allegations that the Applicant has a history of previous offences. The question of "eligibility" under notification 12/2012 dated 17.03.2012 arises only if the Applicant desires to import gold on concessional rate of duty and nothing prevents import of gold at normal rate of customs duty. The Government also notes that the quantity of gold involved is small and using the fact of non-declaration to dispossess him of the gold is harsh. Further, there are a number of judgments wherein the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 requires it to be exercised. The Hon'ble High Court of Andhra Pradesh in the case of Sheikh Jamal Basha vs GOI 1997 (91) ELT 277 (AP) has stated that under section 125 of the Act it is Mandatory to give option to the person found guilty to pay fine in lieu of confiscation. In another reported judgement 2012 (276) ELT 129 (GOI) in the case of Chellani Mukesh the Hon'ble Revisionary Authority had set aside absolute confiscation and allowed redemption of the of the same under section 125 of the Customs Act,1962.

Under the circumstances, absolute confiscation for non-declaration is an exercise in excess. The ownership of the gold is not disputed and considering overall circumstances of the case in the wake of liberalized policy of the Government, the impugned gold can be allowed redemption on payment of suitable redemption fine and penalty. The order of the Appellate authority is therefore liable to be set aside.

9. In view of the above facts, The impugned Order in Appeal is set aside, the impugned gold is allowed to be redeemed for re-export on payment of Rs. 62,300/- (Rupees Sixty two thousand three hundred). The penalty of Rs. 10,000/- (Rupees Ten thousand) imposed is appropriate.

10. Revision application is disposed of on above terms.

11. So, ordered.


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

ORDER No. 163/2020-CUS (SZ) /ASRA/

DATED 03/03/2020

To,

1. Shri Misriral Nathmal, No. 30 D Avvai Colony, Mannappa Street, Chennai 600085.
2. The Commissioner of Customs, Cochin International Airport, Nedumbassery-683111.

Copy to:

1. Shri N. Vishwanathan, Advocate, Flat 8A, RAMS, Door No. 26, South Mada Street, Shri Nagar Colony, Saidapet, Chennai- 600015.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.