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SPEED POST



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

F.No.373/63/B/14-RA/5189

Date of Issue 02.09.2020

ORDER NO. 17/2020-CUS (SZ)/ASRA/MUMBAI DATED 04.03.2020 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 Leek Mohamed

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal C.CUS No.
72/2014 dated 24.01.2014 passed by the Commissioner of
Customs (Appeals), Chennai.

ORDER

This revision application has been filed by Shri Leek Mohamed (herein after referred to as the Applicant) against the order in appeal Order-in-Appeal C.CUS No. 72/2014 dated 24.01.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the Applicant, arrived from Singapore on 26.06.2013 and was intercepted while he was going to the Green Channel. Examination of his person led to the recovery of a gold bar weighing 100 grams valued at Rs. 2,49,232/- (Rupees Two lacs Forty Nine thousand Two hundred and Thirty two).

3. The Original Adjudicating Authority vide Order-In-Original No. 729/Batch C dated 26.06.2013 ordered absolute confiscation of the impugned gold under Section 111 (d) (l) (m) and (o) of the Customs Act,1962, and imposed penalty of Rs. 24,000/- (Rupees Twenty four thousand) under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-in-Appeal No. C.CUS No. 72/2014 dated 24.01.2014 rejected the appeal of the applicant.

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

5.1 The order of the appellate authority is contrary to the law and probabilities of the case; The applicant submits that he had declared the gold chain and there was no misdeclaration or non-declaration; No reliance can be taken of the statement taken under threat or coercion which has not been corroborated; He is an eligible passenger to import gold having worked in Singapore and stayed abroad for more than eight months; There was no concealment of the gold in baggage; It is not known on what basis the Customs authorities have concluded that the above goods are sensitive in a liberalized era; As he had declared the gold to the authorities under section 77 of the Customs Act,1962, section 80 comes into play; As per the judgement of Supreme Court reported in 42 STC 348 suspicion however

strong cannot take the place of positive proof; The Applicant has been staying abroad for nine months and has come to India after six months, making him an eligible passenger, therefore absolute confiscation is wrong; The impugned order in original itself states that the Applicant is not an habitual offender; The High Court of Calcutta in the case of Commissioner of Customs Vs Uma Shankar Verma [2000 (120) ELT 322 (Cal)] has decided that when goods are not prohibited then Customs authorities have no option but to allow the assessee to pay the fine in lieu of confiscation; The finding that the impugned gold was brought for somebody else is totally baseless; The penalty of Rs. 24,000/- is arbitrary and unreasonable; The Commissioner failed to note that there has to be a clear mental element or mensrea to violate import control regulations. that The Applicant had not attempted to import any of the goods in contravention of any rules and regulations; As per section 125 of the Customs Act, 1962 it is observed that in case of non-prohibited goods held liable for confiscation the same " Shall" be released on payment of fine , the word shall signifies that it is mandatory on the part of the adjudicating Authority to impose fine in lieu of confiscation..

5.2 The Applicant submitted case laws in favor of his case and prayed for setting aside the Order in Appeal of absolute confiscation and allow the gold for re-export or pass further or other orders as deem fit and proper in the facts and circumstances of the case.

6. ~~A personal hearing in the case was held in the case on 21.11.2019, the~~ Advocate for the Applicant Shri A. K Jayaraj, Advocate, attended the hearing, he re-iterated the submissions filed in Revision Application and pleaded that the Applicant had stayed abroad for 262 days and the gold was not concealed.

7. The facts of the case reveal that the Applicant had brought a gold bar jewelry weighing 100 grams valued at Rs. 2,49,232/-. He was intercepted as he was walking to the Green Channel, and as declaration was not made as required under section 77 of the Customs Act, 1962 the confiscation of the gold is upheld.

8. However, there is no allegation that the gold bar was concealed. The order in original mentions that there is no known past history of such cases. Import of gold is restricted not prohibited. The Applicant is an NRI working in Singapore and having worked abroad for nine months is an eligible passenger to import gold on concessional customs duty. The quantity of gold under import is small. The Government therefore observes that absolute confiscation is harsh and unjustified. The penalty of Rs. 24,000/- on the gold is also on the higher side. The Applicant has requested for release of the gold for re-export and the Government, noting his NRI status and the above facts is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

10. Accordingly, the absolute confiscation of the gold is set aside. Re-export of the impugned gold is allowed on payment of a redemption fine of Rs. 25,000/- (Rupees Twenty Five Thousand Only). The penalty imposed under section 112 (a) is also reduced to Rs. 16,000/- (Rupees Sixteen Thousand Only).

10. Revision application is allowed on above terms.

11. So, ordered.

(SEEMA ARORA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 17/2020-CUS (SZ) /ASRA/

DATED 4-03-2020

To,

1. Shri Leek Mohamed, S/o Mubarak Ali, 1/79 Main Road, Millath N, Chakkarapalli PO, Papanas, Thanjavur DT., 614 211.
2. The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.
3. M/s A. K. Jayaraj, Advocate, Old No. 2, New No. 3, Thambusamy Road, Ist Floor, Chennai 600 010.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.