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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. 371/13/B/17-RA/5825

Date of Issue 03.10.2020

ORDER NO. 18/2020-CUS (WZ)/ASRA/MUMBAI DATED 03.09.2020 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 Rajadurai Anpananthar

Respondent : Pr. Commissioner of Customs, Mumbai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-000-APP-473-16-17 dated 27.12.2016 passed by the Commissioner of Customs (Appeals), Mumbai-III.

ORDER

This revision application has been filed by the Shri Rajadurai Anpananthar (herein referred to as Applicant) against the order MUM-CUSTM-000-APP-473-16-17 dated 27.12.2016 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated facts of the case are that the Officers of Customs intercepted the Applicant a British citizen at the CSI International Airport, Mumbai on 04.10.2015 as he tried walking out through the green channel of the arrival hall. Examination of his person resulted in the recovery of one gold kada and crude gold locket totally weighing 299 grams valued at Rs. 7,19,693/- (Rupees Seven lacs Nineteen thousand Six hundred and Ninety three).

3. After due process of the law vide Order-In-Original No. ADC/RR/ADJN/289/2015-16 dated 28.01.2016 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, and imposed penalty of Rs. 75,000/- (Rupees Seventy five thousand) under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by this order the Applicant filed appeals with the Commissioner of Customs (Appeals), The Commissioner (Appeals) allowed redemption of the gold for re-export on payment of fine of Rs. 1,25,000/- (Rupees One lac twenty five thousand) and held the personal penalty imposed as appropriate.

5. Aggrieved with the above order the Applicant has filed this revision application for the following reasons;

(a) The applicant was a transit passenger, and there was no concealment of the gold. he was originally granted re-export of the impugned gold without any fine or penalty, whatsoever under order in D.R. No. A-45499 dated 04.10.2015; the order of re-export was reversed into an ITC Action inspite there being no change in the

situation; the reversal of the original order of re-export is not maintainable in law and that the applicant is eligible to re-export without any fine or penalty under Customs Act. 1962.

5.2 The applicant has already made clear submission that, he kept ready the Customs Declaration Form duly filled in wearing personal gold ornaments and transiting via Mumbai to Colombo. This form was taken over by the officers of AIU, Mumbai Airport. This fact was suppressed by AIU officers for reasons best known only to them".

5.3 Further more, the applicant has orally declared the possession of impugned jewellery to the Customs Authority, therefore the imposition of harsh and exorbitant fine and penalty in the Applicant's case was not warranted. In view of the above the Applicant makes a humble request to the Honourable Joint Secretary to kindly reduce the redemption fine and penalty imposed in this case substantially and oblige.


6. In view of the above, a personal hearing in the case was scheduled on 05.12.2020. The Department was represented by Smt. Regina P. Mangalnath, Superintendent and Shri Surendra Pathrabe, Preventive Officer. Shri Somesh Arora, Advocate and Shri R. Arunochalan, Consultant appeared on behalf of the Applicant. They re-iterated that the Applicant was initially allowed re-export, a declaration was given at the time and there was no ingenious concealment and reiterated the submissions made in the Revision Application.

8. The Government has gone through the case records. It is observed that the Applicant was initially allowed re-export. This order was later rescinded and the jewelry was held liable for absolute confiscation by the Original adjudicating authority. The Appellate authority has held the gold liable for confiscation as it was not declared and had opted for the green channel, and allowed redemption of the gold for re-export on payment of fine and penalty.

9. Government observes that the Applicant was intercepted after he had opted for the green channel, thereby declaring that he did not carry any dutiable goods and therefore agrees with the contention of the Appellate authority that

the confiscation of the gold is justified. Once the gold is held liable for confiscation, the misdemeanor/ transgression of the passenger is held as confirmed and therefore the imposition of fine in lieu of confiscation becomes mandatory and leads to imposition of personal penalty on the passenger. However, Government agrees with the contentions raised by the Appellate authority that the gold was worn by the Applicant, he is not a known carrier or smuggler and therefore absolute confiscation is harsh. Given the facts of the case and that the Applicant is a foreign citizen, the Appellate authority has allowed redemption of the gold for re-export. The redemption fine and penalty imposed is appropriate and by no means exorbitant. The impugned order therefore does not merit interference. The Revision application is therefore liable to be dismissed.

10. The impugned order of the Appellate authority is upheld.
11. Revision application is dismissed.
12. So, ordered.


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

ORDER No. 18/2020-CUS (SZ) /ASRA/

DATED 03-03-2020

To,

1. Shri Shri Rajadurai Anpananthar, S/o Kandappu Rajadurai, C/o Shri R. Arunachallam, AB Consultancy Service, Flat No. 3, First Floor, Kala Flats, 84/78, Dr. Ranga Road, Mylapore, Chennai 600 004.
2. The Commissioner of Customs, CSI Airport, Mumbai.

Copy to:

3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.