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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. 380/09/SZ/2019 / 5739

Date of Issue 30.09.2020

ORDER NO. 184/2020-CUS (SZ)/ASRA/MUMBAI DATED 11.09.2020 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 : Commissioner of Customs, Bengaluru.

Respondent : Shri Ramesh Ganeshmal Jain.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 337/2018 dated 04.10.2018 passed by the Commissioner of Customs (Appeals), Bangalore.

ORDER

This revision application has been filed by the Commissioner of Customs, Bangalore (herein referred to as Applicant) against the order No. 337/2018 dated 04.10.2018 passed by the Commissioner of Customs (Appeals), Bangalore.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Ramesh Ganeshmal Jain at the Kempegowda International Airport, Bengaluru on 04.04.2017. The customs declaration form submitted by him did not evidence any dutiable goods. A personal search resulted in the recovery of a crude gold chain worn by him weighing 100 grams valued at Rs. 2,91,200/- (Rupees Two lacs Ninety one thousand Two hundred).

3. After due process of the law vide Order-In-Original No. 45/2018 dated 27.03.2018 the Original Adjudicating Authority ordered confiscation of the gold under Section 111 (d) (i) (l) and (m) of the Customs Act, 1962 and allowed redemption of the gold on payment of Rs. 75,000/- (Rupees Seventy five thousand) redemption fine and imposed penalty of Rs. 27,360/- (Rupees Twenty seven thousand three hundred and sixty) 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) reduced the redemption fine to Rs. 25,000/- (Rupees Twenty five thousand) and allowed the appeal without making any changes in the penalty imposed.

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

5.1 On review of the Order-In-Appeal No.337/2018 dated 04.10.2018, it is seen that reduction in Redemption fine payable from Rs.75,0000/- to Rs.25,000/- is not justified considering the nature of the offence.

5.2 It is seen from the Order-in-Original that the goods seized in the instant \ case is a "Crude Gold Chain of 24 Carat". Normally, crude jewelry is not used as an ornament for personal use and that too 24 carat Gold chain is not suitable for making ornamental jewelry unless the same is converted into 22 carat or of lesser carat to impart the strength to the metal. Thus, it appears the Gold Chain brought by the passenger without declaring to customs was imported solely for commercial purpose and with the intention of maximizing the profit by evading payment of Customs Duty.

5.3 The Board Circular/Instructions issued vide Circular Circular No 09/2001 Cus dated 22.01.2001, issued from F. No 520/57/2000 Cus VI. prescribes that the redemption fine and penalties not only wipes out the margin of profit but also acts as a deterrent against the repeat offences.

5.4 In the instant case, the redemption fine of Rs.75,000/- imposed by the Deputy Commissioner was reduced to Rs.25,000/- without any substantial reason and the redemption fine payable consequent on the Order of the Commissioner (Appeals) is not even 10% of the value of the impugned goods. Thus, it appears that the Appellate Authority reduced the Redemption Fine without appreciating the nature of the offence and the provisions of the Board's Circular.

5.5 The redemption Fine of Rs. 25,000/- payable consequent to the order of the Commissioner (Appeals) fails to wipe out the profit that would have generated and also fails to deter the persons from repeating the offence again. Therefore, the Order-in-Appeal No.337/2018 dated 04.10.2018 of the Commissioner (Appeals) is not legally correct and proper and deserves to be modified.

6. In view of the above, a show cause notice was sent to the Respondent for his response to the revision application and whether he would like to appear for a personal hearing in the matter. Vide email dated 08.09.2020, the respondent requested for dismissal of Revision Application and have also informed that they like to forgo the opportunity of personal hearing due to pandemic situation. Vide


letter dated 03.09.2020 the Applicant department has responded that no personal hearing is sought by the office and the case may be decided on merits.

7. The Government has gone through the facts of the case, The Revision Applications have been filed by the department to address the issue of reduction of redemption fine imposed. The gold chain was worn by the Respondent and it was not concealed. However Government notes that the Respondent did not declare it as required under section 77 of the Customs Act, 1962 and therefore confiscation of the gold is justified.

8. The Government also agrees with the Appellate order allowing the redemption of the gold on payment of redemption fine. However, the Applicant department have rightly pointed out that the redemption fine and penalties should wipe out the margin of profit and be a deterrent so that such acts are not repeated. The order of the Commissioner (Appeals) has reduced the redemption fine to less than 10% of the value of the gold. The release of the gold at such low redemption fine can have the effect of making smuggling an attractive proposition and it fails to be a deterrent for such acts in future. The reduction of redemption fine has also not been properly justified in the order of the Appellate Commissioner. The Board Circular/Instructions issued vide Circular No 09/2001 Cus dated 22.01.2001, issued from F. No 520/57/2000 Cus VI. prescribes that the redemption fine and penalties not only wipes out the margin of profit but also acts as a deterrent against repeat offences. It has been recorded in the Order in Appeal, para 10 that *'the respondent has admitted that the gold chain was purchased by him for maximization of profit'*. 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. The value of the gold chain brought by the respondent is Rs. 2,91,200/- (Rupees Two lacs Ninety one thousand Two hundred). The order in original has rightly allowed redemption of the gold on payment of Rs. 75,000/- (Rupees Seventy five thousand) ie approximately 25% of the value of the gold. The Government is in full agreement with the above order and the quantum of redemption fine imposed. The order in Appeal is therefore liable to be set aside.

9. Government therefore sets aside the impugned Order in Appeal. The Order in Original is upheld as legal and proper. The Revision Application is therefore disposed of on above terms.

10. So, ordered.


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

ORDER No. 184/2020-CUS (SZ) /ASRA/MUMBAI.

DATED 11.09.2020

To,

1. The Commissioner of Customs, Air Cargo Complex, Kempegowda International Airport, Devenahalli, Bengaluru. 560300.
2. Shri Ramesh Ganeshmal Jain, s/o Ganeshmal Jain, M-3, 8th Cross, 3rd Main Road, Lakshminarayanapuram, Bangalore 560 021.

Copy to:

1. ✓ Sr. P.S. to AS (RA), Mumbai.
2. ✓ Guard File.
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