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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. 373/91/B/17-RA

Date of Issue

ORDER NO. 19 /2020-CUS (SZ)/ASRA/MUMBAI DATED 05.03.2020 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 Middi Ramesh Babu

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal C.Cus-I
No.. 57/2017 dated 23.03.2017 passed by the
Commissioner of Customs (Appeals), Chennai.

ORDER

This revision application has been filed by Shri Middi Ramesh Babu (herein after referred to as the Applicant) against the order in appeal Order-in-Appeal C.Cus-I No. 57/2017 dated 23.03.2017 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the Applicant, arrived from Abudhabi on 29.01.2016 and was intercepted walking through the Green Channel. On personal examination he was found carrying 8 bars of gold bars totally weighing 932 grams valued at Rs. 25,32,244/- (Rupees Twenty five lacs Thirty two thousand Two hundred and Forty four). The gold bars were recovered from the inner pocket of the trousers worn by the Applicant.

3. The Original Adjudicating Authority vide Order-In-Original No. 161/07.12.2016 dated 07.12.2016 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. 2,50,000/- (Rupees Two lacs Fifty thousand) under Section 112 (a) of the Customs Act. A penalty of Rs. 10,000/- was also imposed under section 114AA of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus-I No. 57/2017 dated 23.03.2017 set aside the penalty under section 114AA of the Customs Act, 1962, and rejected the rest of the appeal.

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

5.1 The orders of the Ld. Adjudicating Authority is arbitrary in nature in view of the facts; The Applicant did not at all commit or omit to do anything which renders the gold liable for confiscation. The penalty should not have been imposed and the should have been allowed for re-export; The Applicant is facing stiff financial trauma due to confiscation of the gold; The gold under seizure belongs to him and he is not a carrier; As per section 125 of the Customs Act goods which are prohibited the option of redemption is discretionary whereas in case of other goods it is mandatory.

5.2 The Applicant relied upon various judgements in support of his case and prayed for setting aside the absolute confiscation of the gold and release of the gold for re-export on redemption fine or any other order with consequential relief.

6. A personal hearing in the case was held in the case on 08.01.2020 the Applicant Shri Middi Ramesh Babu, attended the hearing, he re-iterated that he was intercepted at the metal detector, before the green Channel. The gold bars were not ingeniously concealed. The request for video footage was not granted and prayed for release on redemption fine and reduced penalty.

7. The facts of the case reveal that the Applicant had brought 8 bars of gold bars totally weighing 932 grams valued at Rs. 25,32,244/- (Rupees Twenty five lacs Thirty two thousand Two hundred and Forty four). A proper declaration was not made as required under section 77 of the Customs Act,1962 therefore the confiscation of the gold is upheld.

8. However, import of gold is restricted not prohibited. The gold was carried by the Applicant in his trouser pockets, though concealed it cannot be termed as ingenious concealment and therefore does not justify absolute confiscation. Gold being valuable is always kept concealed for safety and security, especially during travel. The ownership of the gold is not disputed and the Applicant is not a carrier. The Applicant is an NRI and does not have any previous cases registered in his name. The Applicant also submits that he was intercepted at the metal detector and this aspect does not feature in the facts of the case.

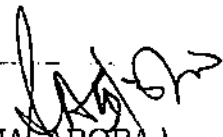
9. In the case of Hargovind Das K. Joshi v/s Collector of Customs reported in 1992 (61) E.L.T. 172 (S.C.),The Apex Court has pronounced that a quasi judicial authority must exercise discretionary powers in judicial and not arbitrary manner and remanded the case back for consideration under section 125(1) of the Customs Act, 1962. Reliance is also placed on the decision of the Honble High Court of Andhra Pradesh reported in Shaikh Jamal Basha Vs. GOI [1997 (91)ELT 277 (A.P.)]wherein it has been held that option to pay the fine in lieu of the confiscation of the goods is to be given to the importer.

The Government therefore observes that absolute confiscation is harsh considering the facts and circumstances of the case. The Applicant has requested for release of the gold on redemption fine and penalty and the Government 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. The impugned gold is allowed to be redeemed on payment of a redemption fine of Rs. 6,33,000/- (Rupees Six Lacs Thirty Three Thousand only). The penalty imposed under section 112 (a) is appropriate.

11. Revision application is allowed on above terms.

12. So, ordered.


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

ORDER No. 19 /2020-CUS (SZ) /ASRA/MUMBAI

DATED 5-3-2020

To,

Shri. Middi Ramesh Babu.
 Flat No. 301, Dreams Avenue Apartments,
 Opposite to Sunil Krishna Hotel,
 Old Renigunta Road, Tirupati, 571 501.

Copy To,

1. The Commissioner of Customs, Chennai -I Commissionerate, New Custom-House, Meenambakam, Chennai-600 027.
2. The Commissioner of Customs (Appeals), 60, Rajaji Salal, Custom House, Chennai-600 001.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.