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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. 373/152/B/15-RA/4573

Date of Issue 27/08/2021

ORDER NO. 9/2021-CUS (SZ)/ASRA/MUMBAI DATED 20.08.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Iyyappan Natrajan

Respondent : Commissioner of Customs & C. Ex., Airport, Madurai

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 131/2014 dated 01.12.2014 passed by the Commissioner of C. Ex. (Appeals-I), Madurai.

ORDER

This revision application has been filed by Shri Iyyappan Natrajan (herein referred to as Applicant) against the Order in Appeal No. 131/2014 dated 01.12.2014 passed by the Commissioner of C. Ex. (Appeals-I), Madurai.

2. The Officers of AIU intercepted the Applicant at the Madurai Airport, on 31.07.2014 while passing through the green channel. Examination of his person resulted in the recovery of one gold ring weighing 30.41 gms valued at Rs. 78,458/- (Rupees Seventy four thousand Four hundred and fifty eight) 33 nighties valued at Rs. 3,300/- (Rupees Three thousand Three hundred) and one Samsung 40 inch TV valued at Rs. 35,000/- (Rupees Thirty five thousand).

3. The Original Adjudicating Authority vide its Order-In-Original No. 146/2014-AIU B ordered confiscation of the goods valued at Rs. 38,300/- under section 111 (d) (l) (m) and (o) of the Customs Act, 1962, but allowed redemption of the same on payment of Rs. 13,807/- as redemption fine. The gold ring valued at Rs. 78,458/- was confiscated absolutely. A penalty of Rs. 53,036/- (Rupees Fifty three thousand and thirty six) was also imposed on the Applicant under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) after payment of the redemption fine and penalty requesting release of the gold ring. The Commissioner (Appeals) vide his order No. 131/2014 dated 01.12.2014 rejected the appeal.

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

5.1 The impugned Order-in-appeal No.MAD-CEX-000-APP-131-2014 in A.No.163/2014 (Cus) dated 1-12-2014 is not valid in so far as relating to confirmation of confiscation of one gold ring weighing 30.41 gms. valued at Rs.78,458/- (Rupees Seventy eight thousand four hundred

and fifty eight only) as the appellant prayed for release of gold ring in question on payment of appropriate customs duty.

5.2 The learned Commissioner (Appeals) ought to have ordered release of gold ring weighing 30.41 gins. valued Rupees less than a Lakh and allowed the release of the same. The absolute confiscation is not necessary.

5.3 It is submitted that the imposition of penalty of Rs.53,036/- (Rupees Fifty three thousand and thirty six only) U/s. 112(a) of the Customs Act, 1962 is high, heavy, harsh and far excessive and hence pray for reduction of penalty in the interest of justice.

5.4 Furthermore it is submitted that Section 112(a) of the Customs Act is not applicable when the value of gold ring weighing 30.41 gms. is less than Rupees One Lakh also. The Commissioner (Appeals) ought to have ordered release of the gold ring weighing 30.41 gms. valued at Rs.78,458/- (Rupees Seventy eight thousand four hundred and fifty eight only) on payment of appropriate customs duty.

5.5 The appellant crave leave of the Hon'ble Authority to file additional grounds, if any at the time of hearing. It is therefore prayed that the Hon'ble Authority may graciously be pleased to pass orders

(i) to set aside the impugned Order-in-appeal No.MAD-CEX-000-APP-131-2014 in A.No.163/2014 (Cus) dated 1-12-2014 passed by the learned Commissioner of Central Excise (Appeals-I), Coimbatore at Madurai,

(ii) Be pleased to set aside the order of absolute confiscation of one gold ring weighing 30.41 gms. valued at Rs.78,458/- (Rupees Seventy eight thousand four hundred and fifty eight only) and be pleased to order redemption fine on payment of appropriate customs duty,

(iii) Be pleased to reduce the personal penalty of Rs.53,036/- (Rupees Fifty three thousand and thirty six only) U/s. 112(a) of the Customs Act, 1962 and

(iv) to pass any other order or such other order as may deem fit and proper in the circumstances of the case and thus render justice.

7. Personal hearings in the case were scheduled in the case on 02.03.2021, 09.03.2021, 06.04.2021, 24.10.2018, 13.04.2021, 08.07.2021 and 22.07.2021. Neither the Applicant nor the respondent department responded to the hearing letters. The case is therefore being decided on the basis of available records on merits.

8. The Government has gone through the facts of the case. The facts of the case state that the Applicant was intercepted while he was crossing the green channel. He did not declare the gold and the goods as required under section 77 of the Customs Act, 1962, and he had used the green channel meant for passengers not having anything to declare. The other goods were also in commercial quantity, the confiscation of the gold and goods is therefore justified and the Applicant has rendered himself liable for penal action.

9. Government however opines that the gold ring weighs 30.41 grams and is valued at Rs. 78,458/-, the value of the goods involved is Rs. 38,300/-. There are no allegations that the said goods and gold ring was ingeniously concealed. This definitely does not appear to be a concerted attempt at smuggling. The order of the original adjudicating authority has mentioned that the Applicant is a frequent traveller, however there are no offences registered against his name. The absolute confiscation of the gold ring is therefore harsh and unjustified. There are a catena of judgments of higher courts wherein gold jewelry worn on person has been released on redemption fine and penalty. Government also notes that the penalty imposed on the Applicant on goods and ring totally valued at Rs. 1,16,758/- is Rs. 53,036/- which is 45% of the total value of the goods and is disproportionately high. The Applicant has pleaded for release of the gold ring and reduction of penalty imposed. The Government, keeping in mind the facts of the case is inclined to accept his plea. The order of the Appellate authority is therefore liable to be modified.

10. The impugned gold ring valued at Rs. 78,458/- is allowed redemption on payment of Rs.20,000/- (Rupees Twenty thousand) as redemption fine. The penalty of Rs. 53,036/- imposed is reduced to Rs. 15,000/- (Rupees Fifteen thousand).

11. The revision application is disposed of as above.

Shrawan
20/8/21

(SHRAWAN KUMAR)

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

ORDER No. 9/2021-CUS (SZ) /ASRA/MUMBAI DATED 20-08.2021

To,

1. Shri Iyyappan Natrajan, 4/14C, 12th Cross Renga Nagar, U.K.T. Malai Vayalur Road, Trichy Rural, Tamilnadu.
2. The Commissioner of Customs, Madurai Airport, Madurai

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