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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/265/B/15-RA / 5193

Date of Issue 16.09.2021

ORDER NO. ^{208/2021} CUS (SZ)/ASRA/MUMBAI DATED 26.8.2021 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 Sudheesh Neerthatti Prabhakaran

Respondent : Commissioner of Customs, C. Ex. & S. Tax. Trivandrum

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. TVM-
EXCUS-000-APP-153-15-16 dated 23.07.2015 passed by
the Commissioner of Customs & C. EX. & S. Tax, (Appeals-
III) Cochin.

ORDER

This revision application has been filed by Shri Sudheesh Neerthatti Prabhakaran (herein referred to as Applicant) against the Order-in-Appeal No. TVM-EXCUS-000-APP-153-15-16 dated 23.07.2015 the Commissioner of Customs & C. EX. & S. Tax, (Appeals-III) Cochin.

2. On 03.02.2015 the officers intercepted the Applicant at the Trivandrum International Airport, as he was approaching the exit gate after opting the green channel, and seized two gold chains, one worn by the Applicant and one from his trouser pocket. The gold chains were not declared and totally weighing 465.88 gms, valued at Rs. 11,63,876/- (Rupees Eleven lakhs Sixty three thousand Eight hundred and Seventy six).

3. After due process of the law vide Order-In-Original No. 06/2015 dated 03.02.2015 the Original Adjudicating Authority ordered absolute confiscation of the gold and imposed a penalty of Rs.1,70,000/- (One Lakh seventy thousand) under Section 112 (a) and (b) of the Customs Act,1962 on the Applicant.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals), Commissioner (Appeals) vide his order No TVM-EXCUS-000-APP-153-15-16 dated 23.07.2015 allowed redemption of the gold chains on payment of redemption fine of Rs. 2,00,000/- (Rupees Two lakhs) without interfering in the penalty imposed.

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

5.1 Non declaration of the gold ornaments by the applicant is the only ground on which confiscation of 465.88 gms of gold ornaments was ordered and penalty of Rs. 170000/-was imposed in the impugned order in original.

5.2 Concealment of gold ornaments is not upheld in the order in original. The learned appellate authority set aside order of absolute confiscation and permitted clearance of gold ornaments on payment of appropriate duty imposing redemption fine of Rs. 200000/-. The penalty of Rs. 170000/- was not reduced in the impugned order in appeal.

5.3 The sympathetic circumstances under which non declaration of gold ornaments worn by the applicant and kept in his pocket occurred were not considered by the learned Commissioner (Appeals). The circumstances of the case deserve sympathetic consideration by the revisionary authority (Government of India).

5.4 The applicant's state of mind when he arrived at the Air Customs, Trivandrum from abroad on 22.01.2015 has not been taken into consideration by the learned Commissioner (Appeals) in the impugned order in appeal. The applicant had submitted hospital records to the Commissioner (Appeals) showing that his six year old daughter was undergoing treatment for blood cancer in Regional Cancer Centre, Trivandrum. The applicant had come to Trivandrum from abroad on an emergency visit on receiving a telephone call that his child had developed a serious complications. In that preoccupied state of mental agony, he had unintentionally failed to make a declaration about the gold ornaments worn by him and kept in his pocket. The learned Commissioner (Appeals) did not consider the said state of mind of the applicant when he had arrived at Trivandrum Air Port on 22.1.2015, while imposing redemption fine of Rs. 200000/-. And upholding the penalty of Rs. 170000/-.

5.5 This is the first time that the applicant has committed an offence under the Customs law. The highly confused and agitated mental state of the applicant, caused by the news of the development of a serious complication in the case of the applicants daughter undergoing treatment for blood cancer, was responsible for non declaration of the gold ornaments before the Customs authority. The applicant has already paid duty of Rs. 419578/-, penalty of Rs. 170000/- and redemption fine of Rs.

200000/- and redeemed the gold ornaments. (The Tariff value of the gold ornaments is Rs. 1163876/).

5. In the circumstances, the applicant's case deserves sympathetic consideration and consequential relief by way of reduction of penalty and redemption fine. Medical records of the applicant's daughter are submitted.

6. Personal hearings in the case were scheduled on 02.03.2021, 09.03.2021, 06.04.2021, 13.04.2021, 08.07.2021, and finally held on 23.07.2021. Shri A. Mohanan, Asst. Commr. appeared on behalf of the Respondent online and submitted that the applicants request for reducing the redemption fine and penalty does not deserve consideration on merits and requested to maintain the order of Commissioner (Appeals). Nobody appeared on behalf of the Applicant.

7. The Government has gone through the case records, the Applicant has filed this revision application requesting for reduction of the redemption fine and penalty imposed vide the order of the Appellate authority, claiming that the he was not in his proper state of mind as he had arrived on receiving the news that his six year old daughter who was suffering from cancer had developed complications. That being in a preoccupied state of mental agony he had unknowingly and unintentionally failed to make a declaration about the gold chains worn and carried by him. The Applicant has already incurred expenses of substantial amounts of money for the treatment and has enclosed the medical records of his daughter along with his revision application.

8. The core issue to be decided in this case is whether the impugned gold bits can be allowed redemption by reducing the redemption fine and penalty. In the case of Umabalaraswathi v/s Collector of Customs, 1988(37)ELT 106(Tribunal states " *The non-declaration which entails confiscation under section 111 (1) should be conscious and intentional non-declaration and would not take*

within its ambit more unintentional omission such as not declaring the ornaments worn on the person which are not at all concealed but are visible to the naked eye and therefore we set aside that part of the order." Government notes that there is no past history of such offence/violation by the Applicant. The impugned gold was not concealed ingeniously. The gold is in jewelry form and is personal. The applicant claims ownership of the gold and its ownership is not disputed. The quantity of gold is not very large and not commercial in nature. One gold chain were worn by the Applicant and one was recovered from his trouser pocket and therefore it was not concealed in any way. Government opines that this more of a case of non declaration than a case of smuggling or duty evasion. The Applicant submits that the Gold chains were not concealed by a special effort so as escape examination. The Applicant has already paid the duty of Rs. 4,19,578/-, penalty of Rs. 1,70,000/- and redemption fine of Rs. 2,00,000/- and redeemed the gold ornaments.

9. In a recent judgement by the Hon'ble Supreme Court in the case of M/s Raj Grow Impex and others Vs UOI states ".....*when it comes to discretion, the exercise thereof has to be guided by law; according to the rules of reason and justice; and has to be based on the relevant considerations...*". It is observed that the value of the gold under import is Rs. 11,63,876/- (Rupees Eleven lakhs Sixty three thousand Eight hundred and Seventy six). The redemption fine imposed is Rs.2,00,000/- which amounts to 17.18 % of the value of the gold, and the penalty imposed is also Rs.1,70,000/-which is approximately 15% of the value of the gold. With regard to the imposition of redemption fine and penalty Government places reliance in the decision of Hon'ble CESTAT, Principal Bench, New Delhi in the case of Commissioner of Central Excise, Bhopal vs. Rama Wood Craft Pvt. Ltd (2008 (225) E.L.T. 348 (Tri. - LB)) (Page Nos. 31 to 33) which observed that " *Imposition of penalty is a penal action hence there cannot be cut and dried formulae for quantifying the amount - Attending fact and circumstances, nature and gravity of offences, defence of person and extent of evasion among other things to be taken into account*". Government notes that the Applicant works as a driver in Sharjah, considering that there was no clear attempt at clearing the gold without

payment of customs duty and in view of the facts of the case as detailed in the foregoing paras, Government would like to take a more reasonable view in the matter.

10. In view of the above facts, Government finds the redemption fine of Rs. 2,00,000/- is appropriate. The penalty of Rs. 1,70,000/- is reduced to Rs. 1,00,000/- (Rupees One lakh) under Section 112 (a) of the Customs Act,1962.

11. Revision Application is disposed of on above terms.

Shrawan
26/8/21
(SHRAWAN KUMAR)

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

ORDER No. 208/2021-CUS (SZ) /ASRA/MUMBAI DATED: 26-8-2021

To,

1. Shri Sudheesh Neerthattil Prabhakaran, Neerthattil house, Chittanjoor, P.O. Kunnamkulam, Trichur, - 680 523.
2. The Commissioner of C. Ex., Customs & S. Tax, Trivandrum Comisserate.

Copy to:

1. Shri D. S. Sreeganesh, Chartered Accountant, TARA 181, Tharapadam Lane, Kunnukuzhi, Trivandrum - 695 035, Kerala.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.