

373/153/B/15-RA

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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
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F.No. 373/153/B/15-RA | 5782

Date of Issue 06/10/2021

ORDER NO. 241/2021-CUS (SZ)/ASRA/MUMBAI DATED 29.09.2021 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 Sathish

Respondent : Commissioner of Customs & Central Excise, Airport,
Madurai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 132/2014 dated 01.12.2014 passed by the Commissioner of Central Excise (Appeals-I), Coimbatore.

ORDER

This revision application has been filed by Shri Sathish (herein after referred to as the Applicant) against the order in appeal Order-in-Appeal No. 132/2014 dated 01.12.2014 passed by the Commissioner of Central Excise (Appeals-I), Coimbatore.

2. Briefly stated the facts of the case are that the Applicant, was intercepted when he arrived at the Madurai Airport on 31.07.2014, while he was exiting the green channel. The examination of his person and baggage resulted in the recovery of a gold ring weighing 30.41 gms valued at Rs. 78,458/- (Rupees Seventy eight thousand Four hundred and fifty eight) alongwith 25 damaged nighties and one 40' Samsung LED TV both totally valued at Rs. 37,500/- (Rupees Thirty seven thousand five hundred).

3. The Original Adjudicating Authority vide Order-In-Original No. 149/2014-AIU A dated 31.07.2014 ordered confiscation of the goods ie assorted 25 damaged Nighties and the one 40' Samsung LED TV, but allowed redemption of the same on payment of Rs. 13,519/- (Rupees Thirteen thousand and Five hundred and nineteen) and absolutely confiscated the gold ring and imposed a penalty of Rs.52,748/- (Rupees Fifty two thousand Seven hundred and Forty eight) under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal 136/2014 dated 02.12.2014 rejected the appeal of the Applicant.

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-132-2014 in A.No.164/2014 (Cus) dated 01-12-2014 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 order release of gold ring weighing 30.41 gms. 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. 66,267/- (Rupees Sixty six thousand two hundred and sixty seven only) U/s. 112 (a) of Customs Act, 1962 is high, heavy, harsh and far excessive hence we pray for reduction of penalty in the interest of justice.

5.4 Furthermore it is submitted that Section 112(a) of the Customs Act, 1962 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 payment) of appropriate customs duty.

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

(i) to set aside the impugned Order-in-appeal No.MAD-CEX-000-APP-136-2014 dated 02-12-2014 passed by the learned Commissioner of Central Excise (Appeals-1), Coimbatore at Niladurai,

(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.66,267/- (Rupees Sixty six thousand two hundred and sixty seven 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.

6. Personal hearings in the case were scheduled online through video conferencing mode on 04.03.2021, 12.03.2021, 08.04.2021, 15.04.2021, 02.07.2021 and 16.07.2021. However, neither the Applicant nor any representative(s) attended the hearings, the matter is therefore being decided on merits.

7. At the outset Government notes that the Applicant had brought one gold ring. He did not declare the gold as required under section 77 of the Customs Act, 1962. Since declaration was not made, therefore confiscation of the gold is justified.

8. Government however notes that the case involves one gold ring, thus the quantity of the gold is small. There is no allegation that the gold ring was ingenuously concealed. The ownership of the gold is not disputed. The quantity of gold under import is small. The facts of the case indicate that it is a case of non declaration of gold, rather than a case of smuggling for commercial considerations. Under the circumstances, the seriousness of the misdemeanor is required to be kept in mind when using discretion under Section 125 of Customs Act, 1962 and when imposing quantum of penalty. The absolute confiscation of the gold ring, is therefore harsh and disproportionate.

9. Section 125 of the act provides discretion to grant the release of goods or not so far as goods whose import is prohibited. The Apex court in the case of Hargovind Dash Vs Collector of Customs 1992 (61) ELT 172 (SC) and the several other cases has pronounced that a quasi judicial authority must exercise discretionary powers in a judicious manner and not in arbitrary manner. As per the provisions of section 125 of the customs act, 1962 in case of goods which are prohibited the option of redemption is left to the discretionary power of the authority who is functioning as a quasi judicial authority and in cases of others goods option to allow redemption is mandatory. The Applicant submits that the Hon'ble Supreme Court (full bench) has delivered a judgment on 30.09.2011 in OM Prakash's case Vs union of India wherein it is categorically stated that the main object of the enactment of the said act was the recovery of excise duties and not really to punish for infringement of its provisions.

10. In view of the above Government is inclined to take a reasonable view in the matter and sets aside the impugned orders of the Appellate authority in respect of the impugned gold ring. The impugned gold ring valued at Rs.78,458/- is allowed redemption on payment of Rs. 30,000/- (Rupees Thirty thousand only). The penalty of Rs. 52,748/- imposed under section 112 (a) is also reduced to Rs. 25,000/- (Rupees Twenty five thousand only).

11. Revision Application is partly allowed on above terms.

Shrawan
29/9/21
(SHRAWAN KUMAR)

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

ORDER No. ²⁴⁴/2021-CUS (SZ) /ASRA/

DATED²⁹-09.2021

To,

1. Sathish, S/o Sankar, O. No. 51A, N. No. 23, Vadavoor Palla Street, Thillai Naga, Trichy, -620 018.
2. The Commissioner of Customs & Central Excise, Airport, Madurai.

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