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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. 373/361/B/14-RA 501 Date of Issue 08/05/2018.

ORDER NO.365/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 27.04.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Ahamed Anfaz

Respondent : Commissioner of Customs(Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus No. 1693/2014 dated 12.09.2014 passed by the Commissioner of Customs (Appeals) Chennai.

ORDER

This revision application has been filed by Shri Ahamed Anfaz (herein after referred to as the Applicant) against the order no C. Cus No. 1693/2014 dated 12.09.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case is that the applicant, a Sri Lankan national, had arrived at the Chennai Airport on 21.03.2014. He had brought 18 1ltr bottles of Beehive Brandy valued at Rs. 13,500/- (Thirteen thousand five hundred), and the search of his person resulted in the recovery of Two gold chains and two rings totally weighing 433 grams valued at Rs. 13,03,088/- (Rupees Thirteen lacs Three thousand and Eighty eight).

3. The Original Adjudicating Authority vide Order-In-Original No. 354/2014-AIU dated 02.06.2014 ordered for absolute confiscation of the impugned goods and gold jewelry under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs.1,50,000/- under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus No. 1693/2014 dated 12.09.2014 rejected the appeal of the applicant.

5. The applicant has filed this revision application on the grounds that ;

5.1. That the order of the appellate authority is against law, weight of evidence and circumstances and probabilities of the case; this is his first visit to India and there is no previous offence; He was wearing the gold and had made an oral declaration and showed the worn gold chain to the officers hence the question of declaration does not arise; Being a foreign national he was not aware of the law; The gold jewelry was old and worn for the past several months; he did not admittedly pass through the green channel, He was all along at the red channel under the control of the officers; He is the owner and has not brought the gold for monetary consideration; The gold jewelry was not concealed ingeniously; As per the circular 394/71/97-CUS (AS) GOI dated 22.06.1999 states that arrest and prosecution need not be considered in routine in respect of foreign nationals and NRIs who have inadvertently not declared; CBEC circular 9/2001 gives specific directions stating that a declaration should not be left blank, if not filled in the Officer should help the passenger to fill in the declaration card. Even assuming without admitting that he did not declare the gold it is only a technical fault;

5.2 The Applicant further pleaded that the section 111 (d) (l) (m) and (o) of the Customs Act, 1962 are not attracted in this case; the Hon'ble Supreme Court has in the case of Om Prakash vs Union of India stated that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions;

5.3 The Revision Applicant cited various assorted judgments in support of re-export and prayed for permission to re-export the gold on payment of nominal redemption fine and reduced personal penalty.

6. A personal hearing in the case was held on 07.03.2018, the Advocate for the respondent Shri Palanikumar re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. The Applicant is a foreign national. However every tourist has to comply with the laws prevailing in the country visited. If a tourist is caught circumventing the law, he must face the consequences. It is a fact that the same were not declared by the Applicant as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the gold is justified.

8. However, the facts of the case state that the Applicant was intercepted before he exited the Green Channel. The gold is claimed by the Applicant and there is no other claimant. The gold chains and rings were worn by the Applicant and it was visible and not ingeniously concealed. This is the Applicants first visit to India. The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record to the oral declaration on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant moreso because he is a foreigner.

9. Further, There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. The absolute confiscation of the gold is therefore harsh and unjustified. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The Applicant has pleaded for re-export and the Government is inclined to accept the plea. The order of absolute

confiscation of the gold in the impugned Order in Appeal therefore needs to be modified and the confiscated gold is liable to be allowed for re-export on payment of redemption fine and penalty.

10. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold for re-export in lieu of fine. The gold jewelry weighing 433 grams valued at Rs. 13,03,088/- (Rupees Thirteen lacs Three thousand and Eighty eight) is ordered to be redeemed for re-export on payment of redemption fine of Rs 5,00,000/- (Rupees Five Lacs) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 1,50,000/- (Rupees One lac fifty thousand) to Rs. 1,00,000/- (Rupees One lac) under section 112(a) of the Customs Act,1962.

11. The impugned Order in Appeal stands modified to that extent. Revision application is partly allowed on above terms

12. So, ordered.

27.4.2018

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No.265/2018-CUS (SZ) /ASRA/MUMBAI. DATED 27.04.2018

To,

True Copy Attested

Shri Ahamed Anfaz
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SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. The Commissioner of Customs (Appeals), Custom House, Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
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