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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 373/44/B/16-RA/6190

Date of Issue 26/10/2021

ORDER NO. 266/2021-CUS (SZ)/ASRA/MUMBAI DATED 25.10.2021 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. Mentha Harinath

Respondent : Pr. Commissioner of Customs, Chennai Pin : 600 027.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. CUS-I No. 730/2015 dated 30.11.2015 [C4-I/675/O/2015-Air] passed by the Commissioner of Customs (Appeals-I), Chennai 600 001.

ORDER

This revision application has been filed by Shri. Mentha Harinath (herein referred to as Applicant) against the Order in Appeal No. C. CUS-I No. 730/2015 dated 30.11.2015 [C4-I/675/O/2015-Air] passed by the Commissioner of Customs (Appeals-I), Chennai 600 001.

2. Briefly stated the facts of the case are that the Applicant, was intercepted when he arrived at the Anna International Airport on 11.07.2015, while he was exiting the green channel. The applicant had arrived from Singapore via Kuala Lumpur by Air Asia Flight No. AK-13/11.07.2015 and had filed a nil Customs Declaration Form for possession of dutiable goods. The appellant was found to be carrying gold in the form of belt buckle, belt keeper and watch base totally weighing 407 gms and valued at Rs. 10,01,220/- (MV). Applicant admitted that he was carrying the gold for monetary consideration of Rs. 15,000/-.

3. The Original Adjudicating Authority vide Order-In-Original No. 311/2015-16-Airport dated 11.09.2015 [F.No. O.S No. 726/2015-AIR] ordered absolute confiscation of the impugned gold under Section 111 (d) & (l) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development & Regulation) Act, 1992, and imposed penalty of Rs. 1,00,000/- (Rupees One lakh only) 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 No. C. CUS-I No. 730/2015 dated 30.11.2015 [C4-I/675/O/2015-Air] 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 order of the Respondents are bad in law, weight of evidence and probabilities of the case.

5.2 that true declaration was made before the concerned authorities.

5.3 The request for Re-export of the above gold was not at all considered by the Lower authorities and further they have failed to consider that the value adopted by the lower authorities were not in order and the same was on higher side.

5.4 the respondents have failed to see that the Applicant had opted for the red channel to prove his bonafideness that he has got dutiable goods. However the officers have totally' ignored this and registered a case against the applicant.

5.6 Both the respondents have ignored the Govt., of India order reported in ELY 1995 pages 208 to 287 wherein Re-Export was allowed on payment of redemption fine.

Under the above facts and circumstances of the case, the Applicant has prayed that the Revision Authority be pleased to set aside orders of both the lower authorities and full relief by setting aside the personal penalty of Rs. 1,00,000/- and to order for re-export and thereby render justice.

6. Personal hearings in the case through vide conferencing mode were scheduled online on 18.08.2021 , 25.08.2021. However, Shri. K. Mohamed Ismail, Advocate for the applicant vide his letter dated 14.08.2021 waived the personal hearing and requested to take the considerations of the adjudicating authority as their arguments and to decide the case in the applicants favour and prayed for release of the gold.

7. At the outset, the Government notes that the Applicant had brought the gold in the form of a belt buckle, belt keeper and watch base which were painted and worn by him to conceal the same from the scrutiny of the Customs at the airport. Applicant had filed 'Nil' Customs declaration form for possession of any dutiable goods and on query, had replied in the negative for possession of dutiable goods. A declaration as required under section 77 of the Customs Act, 1962 was not submitted and therefore the confiscation of the gold is justified.

8. Government observes that the Hon'ble High Court of Madras, in the case of Commissioner Of Customs (Air), Chennai-I V/s P. Sinnasamy reported in 2016 (344) E.L.T. 1154 (Mad.), in para 47 of the said case the Hon'ble High Court has observed *"Smuggling in relation to any goods is forbidden and totally prohibited. Failure to check the goods on the arrival at the customs station and payment of*

duty at the rate prescribed, would fall under the second limb of section 112(a) of the Act, which states omission to do any act, which act or omission, would render such goods liable for confiscation.....". Thus, failure to declare the goods and failure to comply with the prescribed conditions has made the impugned gold "prohibited" and therefore liable for confiscation and the Applicants thus liable for penalty.

9. Once goods are held to be prohibited, Section 125 still provides discretion to consider release of goods on redemption fine. Hon'ble Supreme Court in the case of *M/s. Raj Grow Impex [CIVIL APPEAL NO(s). 2217-2218 of 2021 Arising out of SLP(C) Nos. 14633-14634 of 2020 – Order dated 17.06.2021]* has laid down the conditions and circumstances under which such discretion can be used. The same are reproduced below.

71. Thus, when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The requirements of reasonableness, -rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.

71.1. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken.

10. The quantity of gold under import is small and is not commercial quantity. The gold articles are of 22 carat gold. There are no allegations that the applicant is a habitual offender and was involved in similar offence earlier. 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 misdemeanour is required to be kept in mind when using discretion under Section 125 of the Customs Act, 1962 and while imposing quantum of penalty.

11. The absolute confiscation of the gold, leading to dispossession of the applicant of the gold in the instant case is therefore harsh and not justified. Government therefore, sets aside the impugned order of the appellate authority. The impugned gold in the form of belt buckle, belt keeper and watch base is allowed redemption on payment of Rs. 4,00,000/- (Rupees Four Lakhs only). The Government finds that the penalty of Rs. 1,00,000/- (Rupees One Lakhs only) imposed under Section 112(a) of the Customs Act, 1962 is appropriate and is not inclined to interfere in the same.

12. Revision Application is disposed of on the above terms.

Shrawan
25/10/21
(SHRAWAN KUMAR)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. ²⁶⁶ /2021-CUS (SZ) /ASRA/

DATED 25-10-2021

To,

1. Shri. Mentha Harinath, 25, 2nd Floor, Arundale Street, Mylapore, Chennai - 600 004.
2. The Pr. Commissioner of Customs, Anna International Airport, Meenambakkam, Chennai - 600 027.

Copy to:

1. Shri. K. Mohamed Ismail, Advocate, New No. 102, (Old No. 271), Linghi Chetty Street, Chennai - 600 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File,
4. File Copy.