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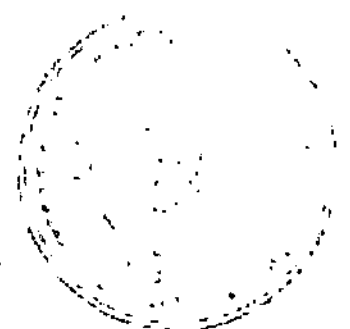
Date of Issue 31.08.2020

ORDER NO 27 /2020-CUS (SZ)/ASRA/MUMBAI DATED 21.08.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Nazurudeen

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.CUS No. 832/2014 dated 08.05.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Nazurudeen (herein after referred to as the Applicant) against the order in appeal Order-in-Appeal C.CUS No. 832/2014 dated 08.05.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the Applicant, arrived from Dubai on 16.07.2013 and was intercepted at the Green Channel. Examination of his person led to the recovery of a gold chain weighing 78.4 grams valued at Rs. 1,97,317/- (Rupees One lac Ninety Seven thousand Three hundred and Seventeen).

3. The Original Adjudicating Authority vide Order-In-Original No. 837/2013-Batch C dated 16.07.2013 ordered absolute confiscation of the impugned gold under Section 111 (d) (l) (m) and (o) of the Customs Act,1962, and imposed penalty of Rs. 20,000/- (Rupees Twenty thousand) 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. 832/2014 dated 08.05.2014 rejected the appeal of the applicant.

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

5.1 The order of the appellate authority is contrary to the law and probabilities of the case; The applicant submits that he had declared the the gold chain and there was no misdeclaration or non-declaration; No reliance can be taken of the statement taken under threat or coercion; He is an eligible passenger to import gold having worked in Singapore and stayed abroad for more than eight months; There was no concealment of the gold in baggage; As he had declared the gold to the authorities under Section 77 of the Customs Act,1962, section 80 comes into play; It is not known on what basis the Customs authorities have concluded that the above goods are sensitive in a liberalized era; As per the judgement of Allahabad High Court 27 STC 337 and Supreme Court reported in 42 STC



348 suspicion however strong cannot take the place of positive proof; The Commissioner himself had accepted the fact that the Applicant is an eligible passenger, therefore absolute confiscation is wrong; The impugned order in original itself states that the Applicant is not an habitual offender. The High Court of Calcutta in the case of Commissioner of Customs Vs Uma Shankar Verma [2000 (120) ELT 322 (Cal)] has decided that when goods are not prohibited then Customs authorities have no option but to allow the assessee to pay the fine in lieu of confiscation; The finding that the impugned gold was brought for somebody else is totally baseless; The penalty of Rs. 10,000/- is arbitrary and unreasonable. The Applicant had not attempted to import any of the goods in contravention of any rules and regulations; As per section 125 (1) the Adjudicating Officer is under a mandatory duty to give option to pay fine in lieu of confiscation; There is no evidence to show that the Applicant had acted in deliberate defiance of the law in conscious disregard of their obligations.

5.2 The Applicant submitted case laws in favor of his case and prayed for setting aside the Order in Appeal of absolute confiscation and allow the gold for re-export or pass further or other orders as deem fit and proper in the facts and circumstances of the case.

6. A personal hearing in the case was held in the case on 21.11.2019, the Advocate for the Applicant Shri A. K Jayaraj, Advocate, attended the hearing, he re-iterated the submissions filed in Revision Application and pleaded that the Applicant had worn the said gold chain and has a permit to work in Dubai.

7. The facts of the case reveal that the Applicant had brought a gold chain jewelry weighing 78.4 grams totally valued at Rs. 1,97,317/-. He was intercepted in the Green Channel, and as declaration was not made as required under section 77 of the Customs Act, 1962 the confiscation of the gold is upheld.

8. However, the Adjudication order states that the gold chain was recovered from the applicants person and the Applicant in his revision application avers that he had worn the gold. It is therefore safely concluded that the gold chain was not ingeniously concealed. The order in original mentions that there is no



known past history of such cases. Import of gold is restricted not prohibited. The Applicant is an NRI working in Dubai and having worked abroad for eight months is an eligible passenger to import gold on concessional customs duty. The quantity of gold under import is small. The Government therefore observes that absolute confiscation is harsh and unjustified. The penalty of Rs. 20,000/- on the gold is also on the higher side. The Applicant has requested for release of the gold for re-export and the Government, noting his NRI status is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

10. Accordingly, the absolute confiscation of the gold is set aside. Re-export of the impugned gold is allowed on payment of a redemption fine of Rs. 20,000/- (Rupees Twenty Thousand Only). The penalty imposed under section 112 (a) is also reduced to Rs. 10,000/-. (Rupees Ten Thousand Only).

10. Revision application is allowed on above terms.

11. So, ordered.

(SEEMA ARORA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. ²⁷/2020-CUS (SZ) /ASRA/MUMBAI DATED 21.04.2020

To,

1. Shri Nazurudeen, S/o Abdul Majeed, 3/271 Akbar Street, Arangakudi Tranqubar, Nagar Dist, Tamil Nadu.
2. The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.
3. M/s A. K. Jayaraj, Advocate, Old No. 2, New No. 3, Thambusamy Road, Ist Floor, Chennai 600 010.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

