

REGISTERED  
SPEED POST

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

F.No.373/247/B/14-RA / 3618

Date of Issue 31.07.2020

ORDER NO 29 /2020-CUS (SZ)/ASRA/MUMBAI DATED 21.07.2020 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 Samsudeen

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. 670/2014 dated 11.04.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Samsudeen (herein after referred to as the Applicant) against the order in appeal Order-in-Appeal C.CUS No. 670/2014 dated 11.04.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the Applicant, arrived from Dubai on 26.11.2013 and was intercepted by the Customs officer, examination of his person led to the recovery of a gold bar weighing 100 grams valued at Rs. 2,62,062/- ( Rupees Two lacs Sixty two thousand and Sixty two ). The gold bar was recovered from his purse.

3. The Original Adjudicating Authority vide Order-In-Original No. 1390/2013-Batch A dated 26.11.2013 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. 27,000/- ( Rupees Twenty seven 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. 670/2014 dated 11.04.2014 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 had not attempted to import any of the goods into India in contravention of any rules and regulations prevailing in India; The goods are sensitive trade items; The Commissioner purportedly relied upon extraneous considerations which has no nexus of any kind whatsoever in with the goods brought in the instant case; The applicant submit that, he had not concealed the above Gold Bar and the above Gold Bar should be allowed for re-export a orders held by Hon'ble High Courts and Revision Authority; The Commissioner in refusing to clear the said goods has taken into consideration irrelevant facts and relevant facts have been left out; The impugned order is tainted with the vice of non-application of mind and suffers from grave errors which are apparent on the face of the records; The applicant submits that he had declared the gold bar and

there was no misdeclaration or non-declaration; 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; In



the present case the goods were not prohibited goods and it is mandatory to release the goods in terms of Section 125 of the Customs Act, 1962; The applicant submits that the department cannot pass different set of orders for each and every person for the same set of facts and therefore order of absolute confiscation should be set aside; As per section 125 of the Customs Act, 1962 it is observed that in case of non-prohibited goods held liable for confiscation the same " Shall" be released on payment of fine , the word shall signifies that it is mandatory on the part of the adjudicating Authority to impose fine in lieu of confiscation.

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 carried the gold bar in his wallet.

#### FINDINGS

7. The facts of the case reveal that the Applicant had brought a gold bar weighing 100grams totally valued at Rs. 2,62,062/- ( Rupees Two lacs Sixty two thousand and Sixty two ) in his wallet. 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. The issue before the Government is whether the absolute confiscation in the case is justified. The Government observes that the Detention / Seizure sheet of the items of the Passenger's baggage, mentions 10 previous offences registered in the name of the Applicant. It indicates that the Applicant is an habitual offender and has continued on the same path,inspite of being penalized earlier. Apart from the past offences in the years 2002, 2003, 2005 & 2008, he has been penalized thrice in the year 2011 and thrice again in the year of this seizureie 2013. The facts of the present case reveal that he replied in the negative when asked whether he was carrying gold clearly indicating that his past experiences has not brought a change in his behavior and activities. These facts compels that Government to weigh the case in favour of the department. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the goods absolutely and imposed penalty and the Appellate Authority has rightly upheld the order. The impugned Revision Application is therefore to be dismissed.



ORDER

9. The impugned Order in Appeal C. CUS No. 670/2014 dated 11.04.2014 passed by the Commissioner of Customs (Appeals), Chennai is upheld.
10. Revision application is dismissed.
11. So, ordered.

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

ORDER No. <sup>29</sup> /2020-CUS (SZ) /ASRA/MUMBAI DATED 21-04-2020 .

To,

1. Shri Samsudeen, 1-23, Oppilon Post, Kadaladi Taluk, Ramanathapuram 623 703.
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.)

