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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. 373/123/B/13-RA/5558

Date of Issue 27/11/19

ORDER NO. 32/2019-CUS (SZ)/ASRA/MUMBAI DATED 28.10.2019 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 Ganeson Chonaiyan

Respondent : Commissioner of Customs, Airport Chennai.

Subject : Revision Application filed, under Section 129DD of the
— Customs Act, 1962 against the Order-in-Appeal
1562/2013 dated 31.10.2013 passed by the
Commissioner of Customs (Appeals), Chennai.

ORDER

This revision application has been filed by Shri Ganeson Chonaiyan (herein after referred to as the Applicant) against the order in appeal No. 1562/2013 dated 31.10.2013 passed by the Commissioner of Customs (Appeals), Cochin.

2. Briefly stated the facts of the case is that the applicant, a Singapore national arrived at the Chennai International Airport on 08.12.2012. Examination of his baggage and person resulted in the recovery of two gold chains with pendant and one chain totally weighing 158 gms valued at Rs. 4,91,941/- (Rupees Four Lacs Ninety One thousand Nine hundred and Forty one). The gold was worn by the applicant and covered by the full sleeved clothes worn by her.

3. The Original Adjudicating Authority vide Order-In-Original No. 929/2012 dated 08.12.2012 ordered confiscation of the impugned gold under Section 111 (d), (i) (l) and (m) of the Customs Act,1962, but allowed redemption of the same for re-shipment on payment of a redemption fine of Rs. 2,40,000/- (Rupees Two lacs Forty thousand) and imposed penalty of Rs. 10,000/- (Ten 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. 1562/2013 dated 31.10.2013 rejected the appeal of the applicant.

5. The applicant has filed this Revision Application inter alia on the grounds that;

5.1 The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The Applicant is an eligible; The Applicant is a citizen of Singapore and the gold was brought for his sister, Mother and for his marriage; The Applicant was wearing the gold but the officers registered the case as if he had not declared the same; He was wearing the gold jewelry and having stayed abroad for the past six months he is eligible passenger for concessional rate of duty under Notfn.

03/2012; Even assuming without admitting he has not declared before the officers and he tried to pass through the green channel it is only a technical fault; He had brought the gold out of his earnings; He never concealed the gold chains and he was wearing the same; He was wearing the gold jewelry and it was visible and hence the question of declaration does not arise; Prosecution need not be considered in routine in respect of foreign nationals and NRIs who have inadvertently not declared; The redemption fine and penalty is very high and unreasonable; Bonafide baggage has not been defined as per the Customs Act, 1962; 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; That as per the department the Applicant was trying to evade duty amount of Rs. 49,000/- but the adjudicating Authority has imposed fine of Rs. 2,40,000/- and penalty of Rs. 10,000/- which is high and unreasonable.

5.2 The Revision Applicant cited various assorted judgments and boards policies in support of his case and prayed for reduction of redemption fine and reduced personal penalty.

6. A personal hearing in the case was scheduled was scheduled on 30.08.2019. The Advocate for the Applicant Shri Palanikumar in his letter dated 28.08.2019 expressed his inability to appear in the case and requested that the order be passed on the basis of available records.

7. The Government has gone through the facts of the case, The gold was not declared as required under section 77 of the Customs Act, 1962 and therefore confiscation of the gold is justified.

8. However, the Applicant has submitted that he was wearing the gold and it cannot be termed as ingeniously concealed. Import of gold is restricted not prohibited. The Applicant is a Singapore citizen and the adjudication order specifically states that there is no past history of such misdemeanors. The ownership of the gold is not disputed. Thus the mere non-submission of the declaration cannot be held against the Applicant and dispossess her of the gold.

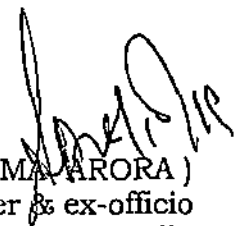
8. There are a number of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the

Customs Act, 1962 have to be exercised. In view of the above facts, and the fact that the Applicant is a foreign national the Government is of the opinion that a lenient view can be taken in the matter. The Applicant has pleaded for reduction of the redemption fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal is therefore liable to be set aside.

9. Accordingly, the Order of the Commissioner(Appeals) is set aside. Re-export of the impugned gold is allowed on payment of redemption fine of Rs. 1,00,000/- (Rupees One lac). There are no grounds for reduction of penalty under section 112 of the Customs Act,1962. Penalty imposed is commensurate to the offence committed.

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 32/2019-CUS (SZ) /ASRA/

DATED 28.10.2019

To,

Shri Ganesan Chonaiyan
 s/o Shri Chonaiyan, No. 10, Narayanan Nagar, Annanagar (West) Chennai-101.

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. Shri Palanikumar, Advocate, No. 10, Sunkurama Chetty Street, Opp High court, 2nd Floor, Chennai - 600 001.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

Chr