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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. 373/48/B/15-RA

Date of Issue 7/12/19

ORDER NO. 35/2019-CUS (SZ)/ASRA/MUMBAI DATED 29.10.2019 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 Rasul Khan

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus-I No. 110/2014 dated 10.12.2014 passed by the Commissioner of Customs (Appeals-I), Chennai.

ORDER

This revision application has been filed by Shri Rasul Khan (herein referred to as Applicant) against the order C.Cus-I No. 110/2014 dated 10.12.2014 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Rasul Khan at the Anna International Airport, Chennai on 17.04.2014 after he had attempted to clear himself at the green channel. Examination of his baggage and person resulted in recovery of a gold rod weighing 290 grams valued at Rs. 8,68,260/- (Rupees Six Lakhs Sixty eight thousand Two hundred and sixty). The gold was ingeniously concealed in a steel dumbbell carried by the Applicant. The Applicant in his statement interalia stated that he had received the gold from one person named Shri Moideen to be delivered outside Chennai airport.

3. After due process of the law vide Order-In-Original No. 532/2014 - AIU dated 11.05.2018 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 70,000/- (Rupees Seventy thousand) under Section 112 (a) and (b) of the Customs Act, 1962.

4. Aggrieved by this order the applicant filed an appeal with the Commissioner of Customs (Appeals), Commissioner (Appeals) vide his order C.Cus-I No. 110/2014 dated 10.12.2014 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, weight of evidence and violates the principle of natural justice; The lower authority ought not to have decided the case exparte; The lower authority has failed to see that the Applicant had declared the gold orally and did not cross the customs barrier; Baggage is not confined to bonafide baggage within the meaning of section 79 of the Customs Act, the personal effects includes any article contained in the baggage; Gold is not a prohibited item; The lower authority ought to have allowed re-export

under section 80 or redemption of the gold under section 125 of the Customs Act, 1962 and allow re-export; The section 125 does not say anything that the redemption option should not be given if the goods are concealed or carried by someone; Nowhere in the Act does it say that absolute confiscation is necessary if the goods are not declared, concealed or misdeclared; As per baggage rules gentlemen passengers can bring gold worth Rs. 50,000/- free of duty, therefore gold above Rs. 50,000/- attracts customs duty; The lower authority ought to have seen that goods once redeemed under section 125 of the Customs Act, 1962, he is the absolute owner of the goods and is at liberty to clear the goods of to re-export; The lower authority should have seen that an opportunity was not given to declare the gold; Bonafide baggage comes into the picture only to claim free allowance; Higher penalty should not have been imposed when there is no mensrea on part of the Applicant.

5.2 The Applicant submitted and prayed for setting aside the absolute confiscation of the gold and allow re-export, reduce the penalty and thus render justice.

6. A personal hearing in the case was scheduled in the case on 01.10.2019, the Advocate for the Applicant Shri A. Ganesh appeared for the Applicant and pleaded for reduction in penalty and he sought relief. Nobody from the department attended the hearing.

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. The facts of the case reveal that the Applicant declared the dutiable goods valued at Rs. 1,000/- in his Customs declaration card. When questioned he denied as to whether he carried dutiable items he replied in the negative. Further, the facts of the case reveal that, after his baggage was subjected to a search, the a gold rod was recovered from a steel dumbbell and therefore the allegation of ingenious concealment is proved. The Applicant has requested for re-export and reduction of penalty and the Government is not inclined to accept his plea. The impugned gold is therefore liable for absolute confiscation.

8. In view of the above facts, the Government is of the opinion that the adjudicating authority has rightly confiscated the gold absolutely and imposed penalty, and the same has been upheld by the Appellate order. Government therefore upholds the Appellate order. The revision Application is therefore liable to be dismissed.

9. The revision Application is accordingly dismissed.

10. So ordered.

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

ORDER No. 35/2019-CUS (WZ) /ASRA/

DATED 23-10-2019

To,
Shri Rasul Khan
C/o Shri A. Ganesh, Advocate, F. Block 179, IV Street, Annanagar, Chennai
600 102

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. Shri A. Ganesh, Advocate, F. Block 179, IV Street, Annanagar, Chennai
600 102
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.