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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. 373/61/B/15-RA | 497 | Date of Issue 28/06/2018

ORDER NO.355/2018-CUS (SZ)/ASRA/MUMBAI DATED 31.05.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri. S. Kumar

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 7/2015 dated 12.01.2015 passed by the Commissioner of Customs (Appeals), Chennai.

ORDER

This revision application has been filed by Shri S. Kumar (herein referred to as Applicant) against the order 7/2015 dated 12.01.2015 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, an Sri Lankan national had arrived at the Chennai Airport on 13.092013. Examination of his baggage resulted in the recovery of assorted gold jewelry totally weighing 185.9 grams valued at Rs. 5,24,423/- (Rupees Five Twenty four thousand four hundred and twenty three).

3. The Original Adjudicating Authority, vide order No. 715/13.10.2014 confiscated the items mentioned above under section 111(d),(l) & (m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 and allowed redemption of the gold for re-export on payment of redemption fine of Rs. 1,50,000/- and concessional rate of duty. A Personal penalty of Rs. 50,000/- was also imposed under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals) Chennai., vide his order No. 7/2015 dated 12.01.2015 rejected the Appeal of the Applicant.

5. The applicant has filed this Revision Application interalia 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 Appellate Authority has simply glossed over all the judgements and points raised in the Appeal grounds; In the case of Vigneswaran vs UOI in W.P. 6281of 2014 (l) dated 12.03.2014 has directed the revenue to unconditionally return the gold to the petitioner as the only undisputed fact is that the Applicant has not declared the gold and absolute confiscation is bad under law, further stating, I am constrained to set aside those portions of the impugned order in original confiscating the gold absolutely. The gold was worn by the Applicant and at the time of interception was voluntarily given to the officers and he also expressed his willingness to pay duty.

5.2 The Applicant further pleaded that he had brought the gold for to avail medical treatment for a test tube baby as the fertility treatment he had taken was ineffective. As the treatment would be costly he had brought the gold to pay for the treatment; The Applicant requested for a linient view in the case.

5.3 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 held on 19.04.2018, the Advocate for the respondent Shri Palanikumar attended the hearing he re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where redemption for re-export of gold was allowed. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. It is a fact that the goods were not declared by the Applicant as required under Section 77 of the Customs Act, 1962, and under the circumstances confiscation of the goods is justified.

8. However; the facts of the case state that the Applicant was intercepted before he exited the Green Channel. The gold was worn by the Applicant and was not ingeniously concealed. There are no previous offences registered against the Applicant. The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record to the oral declaration on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The Applicant has pleaded for reduction of redemption fine and penalty and the Government is inclined to accept the plea. The Order in Appeal therefore needs to be modified.

9. In view of the above, the redemption fine imposed on the goods 185.9 grams valued at Rs. 5,24,423/- (Rupees Five Twenty four thousand four hundred and twenty three) is ordered to be reduced from Rs.1,50,000/- to (Rupees one lakh

fifty thousand) to Rs 1,25,000/- (Rupees One lac Twenty five thousand) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 50,000/- (Rupees Fifty thousand) to Rs.30,000/- (Rupees Thirty thousand) under section 112(a) of the Customs Act,1962.

10. The impugned Order in Appeal stands modified to that extent.

11. Revision application is partly allowed on above terms.

12. So, ordered.

21.5.2018

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No.355/2018-CUS (SZ) /ASRA/MUMBAI DATED 21.05.2018

True Copy Attested

To,

Shri S. Kumar

C/o S. Palanikumar, Advocate,

No. 10, Sunkurama Chetty Street,
Opp High Court, 2nd Floor,
Chennai - 600 001.

28/6/18
एस. आर. हिरूलकर
S. R. HIRULKAR

Copy to:

1. The Commissioner of Customs, Chennai.
2. The Commissioner of Customs (Appeals), Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.