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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. 373/44/B/15-RA/5889

Date of Issue 12/12/19

ORDER NO. 36/2019-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 Wasim Raja

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. 138/2014 dated 17.12.2014 passed by the  
Commissioner of Customs (Appeals-I), Chennai.

ORDER

This revision application has been filed by Shri Wasim Raja (herein after referred to as the Applicant) against the order in appeal C.Cus-I No138/2014 dated 17.12.2014 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case is that the applicant arrived at the Chennai International Airport on 27.08.2014. He was intercepted and examination of his person resulted in the recovery of a gold bar weighing 100 gms valued at Rs. 2,60,925/- ( Rupees Two Lacs Sixty thousand Nine hundred and Twenty Five ).

3. The Original Adjudicating Authority vide Order-In-Original No. 1058/2014- Batch D 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. 26,000/- ( Rupees Twenty Six thousand ) under Section 112 (a) of the Customs Act. The gold bar was recovered from his pant pocket.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus-I No. 138/2014 dated 17.12.2014 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 has failed to see that the Applicant proceeded towards the red channel; The Appellant declared the gold orally and it amounts to declaration under section 77 of the Customs Act; He 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; The gold bar was kept in his pant pockets; Under the circumstances the officer should have detained the

goods under Section 80 of the Customs Act, absolute confiscation was unwarranted; The Order in original is routine and without non application of mind; Gold is not prohibited and the amount under import is low quantity; Re-export should have been allowed as there is no value left after paying Duty, Fine and Penalty; Personal penalty should not have been imposed when mensrea itself is not made out. The lower authority should have seen that an opportunity was not given to declare the gold.

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

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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 submitted that there was no concealment, The gold should have been detained and the redemption fine and penalty imposed was very high. 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. However, the facts of the case reveal that the gold bar was recovered from his pant pockets and there is no allegation of ingenious concealment. Though he is a frequent flier there is no past history of such misdemeanors. The ownership of the gold is not disputed. The Applicant has requested for re-export and reduction of penalty.


8. 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 penalty and has also requested for re-export and the Government is inclined to partly 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. 36/2019-CUS (SZ) /ASRA/

DATED 29.10.2019

To,

Shri Wasim Raja  
S/o Jalavudeen  
No. 8/34, 82<sup>nd</sup> Street, Ashok Nagar Chennai.

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.