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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: 373/46/B/15-RA/5773

Date of Issue 12/12/19

ORDER NO.38/2019-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 Kalil Rahuman

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. 130/2014 dated 16.12.2014 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 No. 130/2014 dated 16.12.2014 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 04.06.2014. He was intercepted and examination of his person resulted in the recovery of four gold bars weighing 400 gms valued at Rs. 10,96,400/- (Rupees Ten Lacs Ninety Six thousand Four hundred). The gold bars were recovered from a specially stitched pocket in his underwear. In his statement he admitted that the gold did not belong to him and he was offered Rs. 20,000/- to carry the gold.

3. The Original Adjudicating Authority vide Order-In-Original No. 729/2014- AIU 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. 1,00,000/- (Rupees One lac) 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-I No. 130/2014 dated 16.12.2014 rejected the appeal of the applicant.

5. Aggrieved with the above order the Applicant, has filed this revision application inter alia 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 ex parte; The lower authority has failed to see that the Applicant did not cross the customs barrier and had orally declared the gold; 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 redemption of the gold under section 125 of the Customs Act, 1962 and allow re-export, as the

section does not say anything that the redemption should be disallowed if goods are concealed; 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; 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; Personal penalty should not have been imposed when mensrea itself is not made out.

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.

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 and sought re-export. Citing previous orders 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. 3,000/- 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 he was subjected to a search, the gold bars were recovered from a specially stitched pocket in his underwear and therefore the allegation of ingenious concealment is proved considering that he has admitted being a carrier in his voluntary statement. 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.

9. So ordered.



(SEEMA ARORA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 38/2019-CUS (SZ) /ASRA/

DATED 29/10/2019

To,

Shri Kalil Rahuman

4/4, New No. 241, Mumpalaipattinam, Mumpalai P.O., Manamelkudi Tk,
Pudukkottai - 614620.

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.