



सत्यमेव जयते

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/122/B/13-RA/5240

Date of Issue 10.11.19

ORDER NO. 39/2019-CUS (SZ)/ASRA/MUMBAI DATED 30.10.2019 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 Muniswamy Srinivasan

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. 1564/2013 dated 31.10.2013 passed by the Commissioner of Customs (Appeals), Chennai.

ORDER

This revision application has been filed by Shri Muniswamy Srinivasan (herein after referred to as the Applicant) against the order in appeal C.Cus-I No. C.Cus-I No. 1564/2013 dated 31.10.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case is that the applicant arrived at the Chennai International Airport on 08.04.2012. He was intercepted as he was attempting to pass through the green channel. Examination of his baggage and person resulted in the recovery of assorted gold jewelery totally weighing 132 gms valued at Rs. 3,66,768/- (Rupees Three Lacs Sixty six thousand Seven hundred and Sixty eight). In his statement he admitted that the gold did not belong to him.

3. The Original Adjudicating Authority vide Order-In-Original No. 232/2012 ordered absolute confiscation of the impugned gold under Section 111 (d) and (l) of the Customs Act,1962, and imposed penalty of Rs. 35,000/- (Rupees Thirty Five 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. C.Cus-I No. 1564/2013 dated 31.10.2013 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 Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The Applicant declared the gold jewelry but the case was registered as if he did not declare the gold; Though the Applicant insisted that he is the owner of the gold and was willing to pay customs duty, his statement was recorded to state that he was not the owner of the gold through threats and third degree methods; Having stayed abroad for more than eighteen months he is eligible passenger for concessional rate of duty under Notfn. 03/2012 and eligible to bring 10 kgs of gold; 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 and never tried to go out of the Green Channel; Under section 125 of the Customs Act the officer may in case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit; The Applicant has no previous offence against him and is not a die hard smuggler;

5.2 The Revision Applicant cited various assorted judgments and boards policies in support of his case and prayed for release of the gold on concessional rate of duty or allow him to re-export the gold and also reduce the personal penalty imposed.

6. A personal hearing in the case 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. Nobody attended the hearing on behalf of the Respondent.

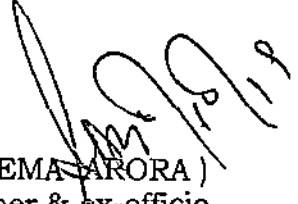
7. The Government has gone through the facts of the case, The gold was not declared as required under section 77 of the Customs Act, 1962 and therefore the confiscation of the gold is justified. However, it is observed that the gold is not in primary form and amount of gold under import is small. The Applicant is an NRI and has returned to India after a prolonged stay abroad and is eligible for concessional rate of duty. There are no allegations of ingenious concealment or any such previous offences. The Applicant in his statement has stated that he is not the owner of the gold and has carried the same on behalf of someone else, however considering other facts it would be unjustified and an exaggeration to term the applicant as a carrier and dispossess him of the gold. Further, there are a catena 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 mandatorily. The section also categorically allows the gold to be released to the person from whose possession

the goods have been recovered, in case the owner is not known . Under the circumstances, the government is inclined to set aside the Appellate order and release the gold on suitable redemption fine and penalty.

8. In view of the above facts, the Government sets aside the order of the Commissioner (Appeals). The impugned gold weighing 132 gms valued at Rs. 3,66,768/- (Rupees Three Lacs Sixty six thousand Seven hundred and Sixty eight) is allowed to be redeemed on payment of redemption fine of Rs.50,000/- (Rupees Fifty thousand) under section 125 of the Customs Act, 1962. Government observes that the facts of the case justify the amount of penalty imposed and needs no interference.

9. Revision Application is disposed as above..

10. So ordered.


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

ORDER No. 33/2019-CUS (SZ) /ASRA/

DATED 30-10-2019

To,

Shri Muniswamy Srinivasan
c/o Shri Palanikumar, Advocate, No. 10, Sunkurama Chetty Street, Opp
High court, 2nd Floor, Chennai - 600 001.

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. Sr. P.S. to AS (RA), Mumbai.
- ✓ 3. Guard File.
4. Spare Copy.