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SPEED POST



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

F.No. 373/47/B/15-RA/5148

Date of Issue 14/11/19

ORDER NO. 40/2019-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 Abdul Salam

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.—62/2014 dated 19.11.2014 passed—by—the Commissioner of Customs (Appeals-I), Chennai.

ORDER

This revision application has been filed by Shri Abdul Salam (herein after referred to as the Applicant) against the order in appeal C.Cus-I No. 62/2014 dated 19.11.2014 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 15.02.2010. He was intercepted as he was attempting to pass through the green channel. Examination of his person resulted in the recovery of a gold bar and one gold bit totally weighing 202 gms valued at Rs. 6,12,666/- (Rupees Six Lacs Twelve thousand Six hundred and Sixty six) from his pant pockets. In his statement he admitted that the gold did not belong to him and he was offered Rs. 5,000/- by one Shri Zahir to carry the gold.

3. The Original Adjudicating Authority vide Order-In-Original No. 336/2014 AIU ordered absolute confiscation of the impugned gold under Section 111 (d) and (l) of the Customs Act,1962, and imposed penalty of Rs. 60,000/- (Rupees Sixty 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. 62/2014 dated 19.11.2014 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 is an eligible passenger to import gold; Gold is not a prohibited item in the present EXIM policy, only regulated; No investigations have been conducted to trace Shri Zahir; Section 125 of the Customs Act,1962 clearly states that if the owner is not known, redemption option should be given from whom the goods are seized; Section 102 of the Customs Act,1962 not followed, the entire story has been fabricated to confiscate the gold; The Applicant had

kept the gold in his pant pockets; The Applicant is eligible to bring gold at Baggage rate of duty, therefore the benefit of section 125 should have been extended; higher rate of personal penalty of Rs. 60,000/- should not have been imposed.

5.2 The Applicant prayed for for setting aside the absolute confiscation of the gold and order its release on merit rate of duty or order for re-export on payment of redemption fine and 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.

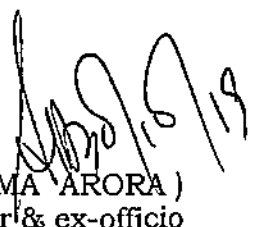
7. The Government has gone through the facts of the case, The gold was not declared as required under section 77 of the Customs Act,1962 and therefore the confiscation of the gold is justified. However, it is observed that the amount of gold under import is not very large. The gold bar and bit was recovered from the pockets of the Applicant and cannot be termed and ingenious concealment. There are no allegations of 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 an exaggeration to term the applicant as a carrier and dispossess him of the gold. Further, there are a number of judgments wherein the discretionary powers vested with the lower-authorities under section 125(1) of the Customs Act,1962 requires it to be exercised. The section also allows the gold to be released to the person from whose possession the goods have been recovered, if the owner of gold is not known. Under the circumstances, absolute confiscation in the case is harsh and unjustifiable. The government is therefore 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 202 gms valued at Rs. 6,12,666/- (Rupees Six Lacs Twelve thousand Six hundred and Sixty six) is allowed to be redeemed on payment of redemption fine of Rs. 1,20,000/- (Rupees One lac Twenty 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. 40/2019-CUS (SZ) /ASRA/

DATED 30-10-2019

To,

Shri Abdul Salam

No. 97, Muslim Street, Varaganeri P.O., Trichy, Tamil Nadu.

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.