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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. 373/57/B/14-RA/1057 Date of Issue 26/07/2018

ORDER NO.491/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 29 .06.2018 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 Sivalingam

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus No. 181 to 183/2014 dated 05.02.2014 passed by the Commissioner of Customs (Appeals), Chennai.

ORDER

This revision application has been filed by Shri Sivalingam (herein referred to as Applicant) against the order no 181 to 183/2014 dated 05.02.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant arrived at the Chennai Airport on 16.07.2013. He was intercepted at the exit and found in possession of assorted gold jewelry weighing 66 gms valued at Rs. 1,60,119/- (Rupees One lakh Sixty thousand One hundred and Nineteen). After due process of the law vide Order-In-Original No. 834/ Batch C dated 16.07.2013 the Original Adjudicating Authority ordered absolute confiscation of the impugned gold under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, and also imposed penalty of Rs. 16,000/- under Section 112 (a). Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C.Cus No. 181 to 183/2014 dated 05.02.2014 rejected the appeal of the applicant.

4. The applicant has filed this Revision Application interalia on the following grounds that

4.1 The order of the appellate authority is bad in law, weight of evidence and probabilities of the case; that both the Respondents failed to see that a true declaration was made by the Applicant and nothing was concealed or misdeclared; that the request for re-export of the gold was not considered; the value adopted by the authorities is on the higher side; that both the Respondents failed to see that the Applicant had opted for the Red Channel proving his bonafides that he has got dutiable goods. However the officers have totally ignored this and registered a case against the Applicant; that both the Respondents have ignored orders of the Government of India reported in ELY 1995 pages 287 to 308, and High Court of judicature at Bombay in its order dated 29.05.2002, Criminal Writ Petition No. 685/2002, wherein re-export has been in similar matters.

4.2 The Revision Applicant prays that the Hon'ble Revision Authority may be pleased to set aside both the lower authorities orders and penalty of Rs. 10,000/- and order for re-export of the same and thereby render justice.

5. A personal hearing in the case was scheduled to be held on 22.03.2018, the Advocate for the respondent Shri K. Mohammed Ismail in his letter dated 21.03.2018 informed that his clients are unable to send their counsel all the way to Mumbai from Chennai and requested that the personal hearing may be waived and the grounds of the Revision Application may be taken as arguments for this Revision, and decide the cases as per relief sought for in the prayer of the Revision and oblige. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. A written declaration of gold was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and had he not been intercepted he would have gone without paying the requisite duty, under the circumstances confiscation of the gold is justified.

7. However, the facts of the case state that the Applicant had not cleared the Green Channel. The gold was recovered from his person and it was not indigenously concealed. The Applicant is not a repeat offender and does not have any previous cases registered against him. 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.

8. 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. The absolute confiscation of the gold is therefore harsh and unjustified. 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 re-export and the Government is inclined to accept the plea. The order of absolute confiscation of the gold in the impugned Order in Appeal therefore needs to be modified and the confiscated gold is liable to be allowed for re-export on payment of redemption fine and penalty.

9. The assorted gold jewelry weighing 66 gms valued at Rs. 1,60,119/- (Rupees One lakh Sixty thousand One hundred and Nineteen) is ordered to be

redeemed for re-export on payment of redemption fine of Rs.65,000/- (Rupees Sixty 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. 16,000/- (Rupees Sixteen thousand) to Rs.13,000/- (Rupees Thirteen thousand) under section 112(a) of the Customs Act,1962.

9. The impugned Order in Appeal is modified as detailed above. Revision application is partly allowed on above terms.

10. So, ordered.

29.6.18

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

ORDER No. 491/2018-CUS (SZ) /ASRA/Mumbai. DATED 29.06.2018

To,

Shri Sivalingam
s/o Radhakrishnan
488 B Mariamman Koil Street,
Kalpadi Perambalur
Tamilnadu.

Copy to:

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

ATTESTED

27/7/18

SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.