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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. 373/252/B/14-RA /6176 Date of Issue 18.11.2020

ORDER NO. 52/2020-CUS (SZ) / ASRA / MUMBAI/ DATED 20.05.2020 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 Mujuburahman

Respondent : Commissioner of Customs, Chennai

Subject : Corrigendum to Order No. 52/2020-CUS(SZ) /ASRA/MUMBAI dated 20.05.2020 in respect of Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus No. 816/2014 dated 02.05.2014 passed by the Commissioner of Customs (Appeals), Chennai.

Mumbai

CORRIGENDUM

In the Order No. 52/2020-CUS(SZ) /ASRA/MUMBAI dated 20.05.2020, the para 1 on page 2 which is reproduced hereinafter;

"This revision application has been filed by Shri Adaikkalasamy (herein referred to as Applicant) against the order 812/2014 dated 02.05.2014 passed by the Commissioner of Customs (Appeals), Chennai."

May be read as

"This revision application has been filed by Shri Mujuburahman (hereinafter referred to as "Applicant") against the Order-in-Appeal No. C. Cus No. 816/2014 dated 02.05.2014 passed by the Commissioner of Customs (Appeals), Chennai."

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

ORDER No. 52/2020-CUS (SZ) /ASRA/DATED 20.05.2020

To,

Shri Mujuburahman,
29, New No. 54, Mamulabbai Street,
Koottaakuppam,
Vanur, Villupuram,
Tamilnadu 605 104

Copy to :

1. The Commissioner of Customs, Anna International Airport, Chennai
2. Shri A. K. Jayaraj, Advocate, No. 3, Thambusamy Road, Kilpauk, Chennai – 600 010
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

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B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

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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. 373/161/B/16-RA/3535 Date of Issue 29.02.2020

ORDER NO.63/2020-CUS (SZ)/ASRA/MUMBAI DATED 26.05.2020 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 Sulaiman Siddiq

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. 205/2016 dated 31.03.2016 passed by the Commissioner of Customs (Appeals), Chennai.

ORDER

This revision application has been filed by Shri Sulaiman Siddiq (herein after referred to as the Applicant) against the order in appeal Order-in-Appeal C.Cus-I No. 205/2016 dated 31.03.2016 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the Applicant, arrived from Singapore on 09.11.2015 and was intercepted at the exit after walking through the Green Channel. The examination of his checked in baggage resulted in the recovery of a blue polythene bag, containing four gold chains weighing 399.5 grams valued at Rs. 10,48,288/- (Rupees Ten lacs Forty eight thousand Two hundred and Eighty eight). The gold bars were recovered from the inner pocket of the trousers worn by the Applicant.

3. The Original Adjudicating Authority vide Order-In-Original No. 455/2015-16 dated 30.01.2016 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. 205/2016 dated 31.03.2016 rejected the appeal.

5. Aggrieved with the above order the Applicant, has filed this revision application on the following grounds;

5.1 The order in Appeal issued by the Appellate Authority and its findings are against law, weight of evidence and probabilities of the case; The mahazar is completely biased and prima it suffers from grave legal and factual infirmities; The Appellate authority has failed to consider the innocence of the applicant, as the traveller who does not have the knowledge of procedure for declaration of gold in his possession.; It is humbly submitted that the Appellate authority failed to explain how he came to the conclusion that the Applicant is frequent traveler; The Appellate authority failed to consider that the appellant has been fighting the

confiscation with a clear intent to pay the duty for release of gold and as such a person with intent to evade duty would not be contesting the confiscation order tooth to nail.; It is humbly submitted that the Appellate authority failed to explain why the voluntary statement of the applicant that he gold brought in for personal use was not accepted. ; It is humbly submitted that the Appellate authority failed to provide us an opportunity to produce the receipt for the purchase of gold chains before passing orders in violation of Priniciples of Natural Justice.; The order in Appeal passed by the Commissioner [Appeals] did not rely upon the fact that the applicant was only an innocent passenger who does not warrant a harsh punishment of confiscation of entire gold for a sum of Rs.10,48,288/- (Rupees Ten Lakhs forty eight thousand two hundred and eighty eight only).

5.2 The applicant therefore prays the Honourable Revision Authority to be pleased to allow this appeal in the interest of justice that substantial rights should prevail over procedural error and technicalities and other grounds and set-aside the order in Appeal passed by the Appellate Authority and order return of Gold Jewellery on payment of duty and pass such other order or further orders like denova consideration on production of requisite documents in accordance with law and thus render justice.

6. A personal hearing in the case was held in the case on 09.12.2019 the Applicant Shri Sulaiman Siddiq, attended the hearing, he re-iterated his submissions in the RA and requested for a lenient view in the matter.

7. The facts of the case reveal that the Applicant had brought four gold chains weighing 399.5 grams valued at Rs. 10,48,288/- (Rupees Ten lacs Forty eight thousand Two hundred and Eighty eight). A proper declaration was not made as required under section 77 of the Customs Act,1962 therefore the confiscation of the gold is upheld.

8. However, the Government observes that the import of gold is restricted not prohibited. The gold was carried by the Applicant on his person in a polythene bag kept in his inner pocket of his trousers and it cannot be termed as ingenious concealment and therefore does not justify absolute confiscation. Gold being valuable is always kept concealed for safety and security. The ownership of the gold is not disputed and the Applicant is not a carrier. The Applicant does not have any previous cases registered in his name. The ownership of the gold is not disputed. In the case of Hargovind Das K. Joshi

v/s Collector of Customs reported in 1992 (61) E.L.T. 172 (S.C.),The Apex Court has pronounced that a quasi judicial authority must exercise discretionary powers in judicial and not arbitrary manner and remanded the case back for consideration under section 125(1) of the Customs Act, 1962. Reliance is also placed on the decision of the Honble High Court of Andhra Pradesh reported in Shaikh Jamal Basha Vs. GOI [1997 (91)ELT 277 (A.P.)]wherein it has been held that option to pay the fine in lieu of the confiscation of the goods is to be given to the importer. The Government therefore observes that absolute confiscation is harsh considering the facts and circumstances of the case. The Applicant has requested for release of the gold on redemption fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

10. Accordingly, the absolute confiscation of the gold is set aside. The impugned gold is allowed to be redeemed on payment of a redemption fine of Rs. 2,10,000/- (Rupees Two lacs Ten thousand). The penalty imposed under section 112 (a) is appropriate.

11. Revision application is allowed on above terms.

12. So, ordered.

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

ORDER No. 63/2020-CUS (SZ) /ASRA/Mumbai DATED 26/05/2020

To,

Shri Sulaiman Siddiq, No. 14/2, Janaki Nagar, 2nd Main Road, Perambur, Chennai-600 001.

Copy To,

1. The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)