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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
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F.No. 373/252/B/14-RA / 3539

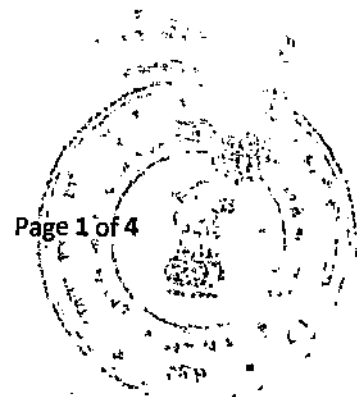
Date of Issue 29.02.2020

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 : 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.



ORDER

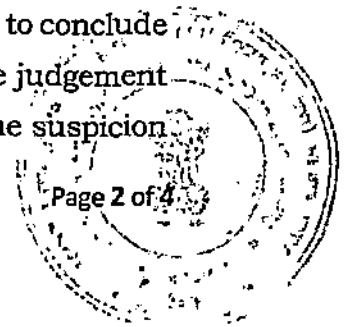
This revision application has been filed by Shri Adaikkalasangam (herein referred to as Applicant) against the order 812/2014 dated 02.05.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 01.01.2014. He was intercepted and examination of his baggage resulted in the recovery of two gold bits totally weighing 103 gms valued at Rs. 2,53,965/- (Rupees Two lakhs Fifty three thousand Nine hundred and Sixty five). The gold was recovered from a hair trimmer machine.

3. After due process of the law vide Order-In-Original No. 3/2014 Batch A dated 01.01.2014 the Original Adjudicating Authority ordered absolute confiscation of the impugned gold under Section 111 (d), (l), and (m) of the Customs Act and imposed penalty of Rs. 10,000/- (Rupees Ten thousand) under Section 112 (a) of the Customs Act, 1962. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 816/2014 dated 02.05.2014 rejected the appeal of the applicant.

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

4.1 The order of the Commissioner (Appeals) is contrary to law and probabilities of the case; There was no misdeclaration and the applicant had declared the gold as per section 77 of the Customs Act; The Applicant is an eligible passenger to bring Gold, The applicant submits that he is working in Malaysia under the Work Permit valid till January 2014, with no short visits. The gold was purchased through his hard earned earnings; That there was no concealment of the goods in the baggage, impugned gold bar was voluntarily shown to the officers without hesitation; The value of gold is the same in India and Malaysia and therefore it was wrong to conclude that the gold was intended for smuggling into India; as per the judgement reported in 27 STC 337, the Allahabad High Court held that the suspicion



however strong cannot take the place of positive material, in the judgement reported in 25 STC 211 The Supreme Court held that to impose penalty the act should be deliberately in defiance of the law and hence the confiscation by the Commissioner is bad in law.; the Commissioner himself had accepted that the appellant is a eligible passenger as per Notification No.31/2003, dated 1.3.2003, as amended to bring Gold Jewellery into India and hence, confiscating the gold jewellery and imposing fine and penalty is totally baseless and wrong.; Section 125 of the Customs Act,1962 states that in respect of non-prohibited goods the word "shall" makes it mandatory on part of the adjudicating authority to impose fine in lieu of confiscation. As the impugned goods are not prohibited the goods deserve release without duty, fine and penalty.

4.2 The Revision Applicant cited case laws in his defence and prayed for setting aside the order, and pass an order for release of the gold without the imposition of redemption fine and penalty.

5. Personal hearings in the case were scheduled to be held on 12.06.2018, 29.08.2019, and 01.10.2019. Nobody from the department or the Applicant attended the said hearings the case is therefore being decided on merits ex-parte.

6. 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 the confiscation of the gold is justified. However the Government notes that the Applicant is an NRI and is an eligible passenger to import gold on concessional rate of duty. Gold is a restricted item and not prohibited. The ownership of the gold is not under dispute and the Applicant is not a carrier. The Applicant has no such previous misdemeanors recorded against his name. The quantity of the gold is too small and therefore absolute confiscation is harsh and unwarranted. There

are numerous case laws which have held that in the liberalized era gold being a restricted item should be allowed for redemption on suitable fine and penalty. In view of the above the Applicant impugned order in appeal is liable to be set aside.



7. Government sets aside the impugned Order in Appeal. The impugned gold is allowed to be redeemed on payment of redemption fine of Rs. 51,000/- (Rupees Fifty one). The penalty of Rs. 10,000/- (Rupees Ten thousand) imposed under section 112 (a) of the Customs Act,1962 is appropriate and does not warrant interference.

8. So, ordered.

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

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

DATED 30-05-2020

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.

ATTESTED

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

