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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
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Mumbai-400 005

F.No. 373/253/B/14-RA

8549

Date of Issue

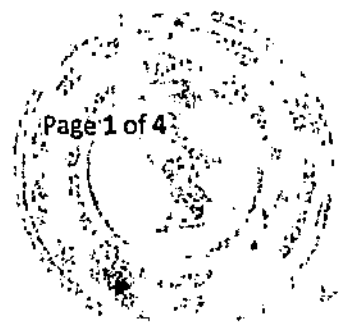
29.08.2020

ORDER NO. 53/2020-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 Mathar Azeez Ahmed Lebbai.

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. 827/2014 dated 07.05.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

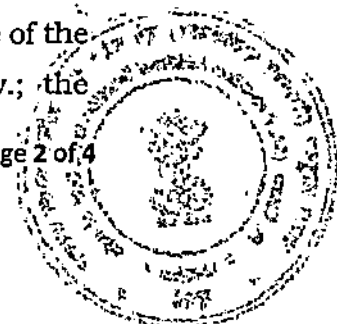
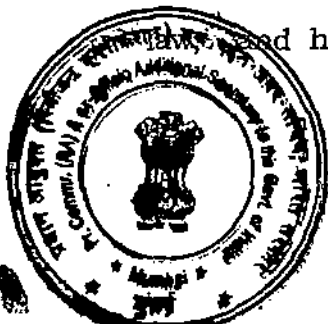
This revision application has been filed by Shri Mathar Azeez Ahmed Lebbai (herein referred to as Applicant) against the order 827/2014 dated 07.05.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 01.08.2013. He was intercepted and examination of his person resulted in the recovery of gold jewelry totally weighing 102.7 gms valued at Rs. 2,54,844/- ( Rupees Two lakhs Fifty four thousand Eight hundred and Forty four).

3. After due process of the law vide Order-In-Original No. 927/2013 – Batch C dated 01.08.2013 the Original Adjudicating Authority ordered confiscation of the impugned gold under Section 111 (d), (l), and (m) of the Customs Act , But allowed redemption of the same for re-export on payment of Rs. 2,00,000/- (Rupees Two lac ) and imposed penalty of Rs. 1,50,000/- ( Rupees One lac Fifty 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. 827/2014 dated 07.05.2014 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 Dubai under the Work Permit valid till December 2013, and also Work Permit issued by the Dubai.; The applicant states that, there was no concealment of the goods in the baggage; The applicant had voluntarily opened the baggage and shown to the Customs Authorities, In fact the subject goods were shown to the authorities without any hesitation or concealment.; 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.; the estimation of Margin of Profit is totally wrong and baseless and not according to the accepted formula of the department and Hon'ble Tribunal itself.; no work sheet has been furnished by the department to the applicant herein has to how the valuation been adopted or margin of profit been arrived at; As there is no concealment and 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 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. Finally the gold was recovered from his person and therefore was not concealed ingeniously. 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. The Government observes that the redemption fine of Rs. 2,00,000/- and penalty of Rs. 1,50,000/- is too high and unreasonable for gold jewelry valued at Rs. 2,54,844/- . The Applicant deserves leniency and the redemption fine and penalty is required to be reduced. The impugned Order in Appeal is therefore required to be set aside.

Government sets aside the impugned Order in Appeal. The impugned gold is allowed to be re-exported on payment of redemption fine of Rs. 51,000/- (Rupees



Fifty one thousand). The penalty of Rs. 1,50,000/- ( Rupees One lac fifty thousand) imposed under section 112 (a) of the Customs Act,1962 is also reduced to Rs.75,000/-(Rupees Seventy Five)Thousand only).

8. So, ordered.

( SEEMA ARORA )

Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. 53/2020-CUS (SZ) /ASRA/MUMBAI

DATED 20-05-2020

To,

Shri Mathar Azeez Ahmed Lebbai, 20 Yahussain Thaikkal Street, Nagore PO,  
Nagapattinam, Tamilnadu - 611 002.

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.)

