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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
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F.No. 373/250/B/14-RA / 3544

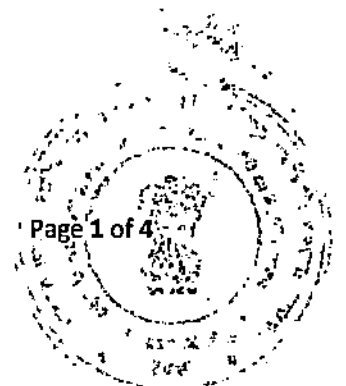
Date of Issue 29.07.2020

ORDER NO. 54/2020-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 Adaikkalasamy

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. 812/2014 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.

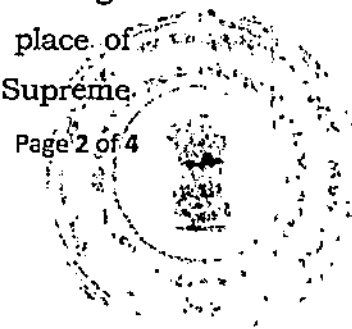
2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 11.11.2013. He was intercepted and examination of his baggage resulted in the recovery of gold bar totally weighing 100 gms valued at Rs. 2,77,640/- (Rupees Two lakhs Seventy seven thousand Six hundred and Forty). The gold was recovered from an old Sony playstation.

3. After due process of the law vide Order-In-Original No. 1316/2013 – Batch D dated 11.11.2013 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. 2,00,000/- (Rupees Two lacs) 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. 812/2014 dated 02.05.2014 rejected the appeal of the applicant for non compliance of section 129E of the Customs Act, 1962.

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 and has not visited India for the past two years; The impugned gold bar was shown to the officers without hesitation; That there was no concealment of the goods in the baggage; 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. The Government has gone through the facts of the case. The Applicant has pleaded that he is not in a position to pay the predeposit and prays for deciding the case on merits. The department has not opposed the Appeal and no prejudice will be caused to the department if this application is taken on merits. Under the circumstances the Government in the interest of justice proceeds to decide the case on merits. 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 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...55,000/- (Rupees Fifty five thousand). The penalty of Rs. 2,00,000/- (Rupees Two lacs) imposed under section 112 (a) of the Customs Act,1962 is also reduced to Rs. 1,00,000/- (Rupees One Lac).

8. So, ordered.

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

ORDER No. 54/2020-CUS (SZ) /ASRA/MUMBAI

DATED 30.05.2020

To,

Shri Adaikkalasamy, S/o Thangarasu, 2/23C, Sakthi Vinayagar, Malar Complex, Keelanilai Kottai PO, Tirumayam TK, Pudukottai Dt.

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.)

