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SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
8<sup>th</sup> Floor, World Trade Centre, Centre - 1, Cuffe Parade,  
Mumbai-400 005

F.No. 373/39/B/18-RA

F. No. 380/26/B/SZ/2018-RA/5680

Date of Issue

11.12.19

ORDER NO. <sup>37-58</sup> /2019-CUS (SZ)/ASRA/MUMBAI-DATED 10.12.2019 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 Badhiyul Hasan

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.  
214/2017 dated 29.12.2017 passed by the Commissioner of  
Customs (Appeals-I), Chennai.

ORDER

This revision application has been filed by Shri Badhiyul Hasan (herein after referred to as the Applicant) and Commissioner of Customs, Chennai against the order in appeal C.Cus-I No. 214/2017 dated 29.12.2017 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case is that the applicant arrived at the Chennai International Airport on 16.05.2017. He was intercepted and examination of his person resulted in the recovery of 7 (seven) nos gold chains totally weighing 699 gms valued at Rs. 19,81,665/- ( Rupees Nineteen lacs Eighty one thousand Six hundred and Sixty five ) recovered from his inner wear.

3. —The-Original-Adjudicating Authority vide Order-In-Original-No.-147-/2017-18-Airport 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. 2,00,000/- ( Rupees Two lacs ) under Section 112 (a) of the Customs Act. A penalty of Rs. 30,000/- ( Thirty thousand was also imposed under section 114AA of the Customs Act,1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus-I No. 214/2017 dated 29.12.2017 set aside penalty of Rs. 30,000/- ( Thirty thousand was also imposed under section 114AA of the Customs Act,1962 and rejected rest of the appeal of the applicant.

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

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5.1 The order of the appellate authority is arbitrary in view of the facts that the applicant did not attempt to clear the gold without payment of duty; The Applicant did not do anything which rendered the gold liable for confiscation; The Applicant was questioned when he was standing in the queue before hand baggage scan machine that he was carrying the gold, therefore the allegations that the applicant was intercepted at the exit point of the arrival is false; The statement recorded while in custody was under coercion, duress and threat and the authorities refused to entertain the retraction claiming it to be an afterthought; The clippings of CCTV footage will definitely prove that the applicant had not crossed the exit, the prayer for the CCTV footage was not accepted; The applicant submitted case laws in his favor and submitted that gold is not a prohibited item and that he is eligible for redemption and re-export;

The entire earnings over a period of time was invested in the gold and therefore the applicant is undergoing untold miseries and severe mental trauma due to absolute confiscation of the gold.

5.2 The Applicant submitted case laws in favor of his case and prayed for setting aside the absolute confiscation of the gold and allow redemption of the gold for home consumption on payment of appropriate duty.

6. The respondent department have also filed an revision application interalia on the grounds that,

6.1 The passenger had attempted to smuggle the gold by way of non-declaration knowing that he was not an eligible passenger to import gold; There was no declaration as required under section 77 of the Customs Act,1962; The Appellate authority has set aside the penalty imposed under section 114AA of the Customs Act,1962, inspite of the fact that the applicant intentionally suppressed the possession of the gold, which amounts to false declaration and therefore the Appellate authorities observation that once penalty has been imposed under section 112 (a) there is no need for imposing penalty under section 114AA does not appear to be legally correct.

6.2 The Department Applicant prayed for setting aside the order of the Appellate authority in respect of setting aside the penalty under section 114AA of the Customs Act, 1962.

7. A personal hearing in the case was scheduled in the case on 03.10.2019, the Applicant, Shri Badhiyul Hasan made written submissions and denied that the gold was concealed. Nobody from the department attended the hearing.

8. The Government has gone through the facts of the case, The gold was not declared as required under section 77 of the Customs Act,1962, and when enquired suppressed the fact that he had brought gold therefore confiscation of the gold is justified. However, the facts of the case reveal that the gold chains were recovered from his inner garments and there is no allegation of ingenious concealment. Whenever travel is contemplated with gold, it is always concealed. The fact between ingenious concealment and concealment for safe custody has to be distinguished in such cases. Import of gold is restricted not prohibited. Further, the ownership of the gold is not disputed and there is no past history of such misdemeanors. In view of these facts, the absolute confiscation of the gold, depriving the passenger of its possession /ownership appears to be a very harsh decision. Further, there are a catena of judgements wherein the release of confiscated gold on redemption and penalty under section 125 of the

Customs Act, 1962 has been justified and held mandatory. Under the circumstances, Government is of the opinion that a lenient view can be taken in the matter. The Applicant has pleaded for redemption of the gold on fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal is therefore liable to be set aside.

9. Accordingly, the absolute confiscation of the gold is set aside. Redemption of the impugned gold is allowed for re-export on payment of redemption fine of Rs. 5,00,000/- ( Rupees Five lacs ). There are no grounds for reduction of penalty under section 112(a) of the Customs Act, 1962. Penalty imposed is commensurate to the offence committed. The Government is therefore in full agreement with the observations of the Appellate authority with regard to penalty imposed under section 114AA. The setting aside of the penalty under section 114AA in the impugned Appellate order is upheld as legal and proper.

10. Revision application is disposed of on above terms.

11. So, ordered.

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

57-58  
ORDER No. /2019-CUS (SZ) /ASRA/

DATED 10.12.2019

To,

Shri Badhiyul Hasan  
S/o Hameed Maricar  
R/o 24, Hakka Sahib Street, Parangipettai, Chidambaram, Cuddalore,  
TamilNadu - 608 502.

Copy to:

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