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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. 373/146/B/16-RA/5682

Date of Issue 11.12.19

ORDER NO. 59/2019-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 Peer Mohammed

Respondent : Commissioner of Customs, Bangalore.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
286/2016 dated 31.03.2016 passed by the Commissioner
of Customs (Appeals), Bangalore.

ORDER

This revision application has been filed by Shri Peer Mohammed (herein after referred to as the Applicant) against the order in appeal No. 286/2016 dated 31.03.2016 passed by the Commissioner of Customs (Appeals), Bangalore.

2. Briefly stated the facts of the case is that the applicant, a Sri Lankan national arrived at the Kempegowda International Airport on 18.10.2014. Examination of his baggage and person resulted in the recovery of one gold ring weighing 30.920 gms valued at Rs. 85,370/- (Rupees Eighty Five thousand Three hundred and Seventy). The gold ring was worn by the applicant.

3. The Original Adjudicating Authority vide Order-In-Original No. 190/2014 dated 18.10.2014 ordered absolute confiscation of the impugned gold under Section 111 (d), (i) (l) and (m) of the Customs Act, 1962, and imposed penalty of Rs. 9,000/- (Nine Thousand) under Section 112 (a) of the Customs Act. A penalty of Rs. 5,000/- (Five 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. 286/2016 dated 31.03.2016 rejected the appeal of the applicant.

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

5.1 The order of the Commissioner (Appeals) is bad in law, opposed to facts and circumstances of the case; The Respondent has erred in arriving to a conclusion that the applicant had contravened the provisions of the Customs Act, 1962 and has passed the order on the basis of assumptions and presumptions; The proceedings were quasi judicial in nature and benefit of doubt should have been extended; The Respondent has erred in passing the order levying huge penalty and redemption fine; The gold jewelry was openly worn by the Applicant and could not have been presumed to be misdeclared by any stretch of imagination; The Applicant is a foreigner and was not aware of the customs formalities and therefore a lenient view and

allowed re-export with reasonable fine; The Applicants had no intention of selling the gold as alleged; The Applicants statement was not voluntary;

5.2 The Revision Applicants prayed for setting aside the order of penalty and redemption fine and allow re-export in the interest of justice and equity.

6. A personal hearings in the case were scheduled on 1.11.2018, 17/18.12.2018 and 03.10.2019. However neither the Applicants nor the Respondents appeared for the hearing, therefore the case is being decided ex parte on merits.

7. 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 therefore confiscation of the gold is justified.

8. However, the Applicant has submitted that he was wearing the gold and it cannot be termed as ingeniously concealed. Import of gold is restricted not prohibited. The Applicant is a Sri Lankan citizen and therefore is not supposed to be aware of Indian Customs laws. There is no past history of such misdemeanors. The amount of gold is small and the ownership of the gold is not disputed. Thus the mere non-submission of the declaration of one gold ring worn by the Applicant cannot be held against the Applicant. Absolute confiscation in such cases is definitely unwarranted and is an order in excess and needs to be reversed.


8. There are a number of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. In view of the above facts, and the fact that the Applicant is a foreign national the Government is of the opinion that a lenient view has to be taken in the matter. The Applicant has pleaded for release of the gold on redemption fine and penalty for re-export and the Government is inclined to accept the plea. The impugned Order in Appeal is therefore liable to be set aside.

9. Accordingly, the Order of the Commissioner(Appeals) is set aside. Re-export of the impugned gold valued at Rs. 85,370/- (Rupees Eighty Five thousand

Three hundred and Seventy) is allowed on payment of redemption fine of Rs. 10,000/- (Rupees Ten thousand). The penalty imposed under section 112(a) is also reduced to Rs. 1,000/- (Rupees One thousand only). Government however observes that once penalty has been imposed under section 112(a) there is no necessity of imposing penalty under section 114AA. The penalty of Rs. 5,000/- (Rupees Five thousand) imposed under section 114AA of the Customs Act,1962 is set aside.

10. Revision application is allowed on above terms.

11. So, ordered.


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

ORDER No. 59/2019-CUS (SZ) /ASRA/

DATED 10.12.2019

To,

Shri Peer Mohamed
 s/o Musa Hanifa, No. 6/24, Albion Lane, Dematagoda, Colombo -9. Sri Lanka.

Copy to:

1. The Commissioner of Customs, Kempegoda International Airport, Bangalore.
2. Shri K.S. Rajan, Advocate, 209, 16th Cross, Wilson Gardens , Bangalore 560 030.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.