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SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/381/B/14-RA

Date of Issue 31/08/2018

ORDER NO. ⁶³⁷/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 16.08.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri. Shantilal Narendra Kumar

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-I No. 1506/2014 dated 14.08.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Shantilal Narendra Kumar (herein referred to as Applicant) against the Order in Appeal C. Cus No. 1506/2014 dated 14.08.2014 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 31.03.2014. He was intercepted and examination of his person resulted in the recovery of gold chain weighing 178 gms valued at Rs. 4,89,122/- (Rupees Four lakhs Eighty Nine thousand One hundred and Twenty Two) was recovered from the applicant.

3. After due process of the law vide Order-In-Original No. 433/2014 Batch B dated 31.03.2014 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) and e, (l), (m) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 50,000/- under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 1506/2014 dated 14.08.2014 rejected the appeal of the applicant.

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

4.1 The order of the authority is against the law, weight of evidence and probabilities of the case; The gold chain was the same that was carried abroad and brought back; On being questioned by the authorities the Applicant had declared the gold chain orally; The order of the Original Adjudicating Authority is based on surmises and conjectures; The Foreign trade policy does not prohibit import of gold, and therefore the absolute confiscation of the gold jewelry is contrary to statutory provisions; The lower authority ought to have permitted redemption of the gold under section 125 of the Customs Act which is mandatory; The Appellate authority has also turned a blind eye to the pleadings of the Applicant on this grounds and therefore the order in Appeal needs to be set aside;



4.2 The Revision Applicant prayed for setting aside the order of the Commissioner (Appeals) and imposition of penalty and consequential relief as deem fit in the interest of justice.

5. A personal hearing in the case was scheduled to be held on 08.08.2018, the Advocate for the respondent Shri Shantilal Narendra Kumar attended the hearing, he re-iterated the submissions filed in Revision Application and submitted that he had declared the gold to the Customs authorities and he was wearing the gold and pleaded for the option for re-export and requested for a lenient view to be taken in the matter. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. A written declaration of gold was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the gold is justified.

7. However, the facts of the case state that the Applicant had not cleared the Green Channel. The impugned gold was worn by the Applicant and it was not indigenously concealed. Import of gold is restricted not prohibited. The ownership of the gold is not disputed. The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record to the oral declaration on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant.

8. There are a catena 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, the Government is of the opinion that absolute confiscation of the gold is harsh and unjustified and therefore 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 therefore needs to be modified.



9. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 178 gms valued at Rs. 4,89,122/- (Rupees Four lakhs Eighty Nine thousand One hundred and Twenty Two) is allowed to be redeemed for re-export on payment of redemption fine of Rs. 1,80,000/- (Rupees One lakh Eighty thousand) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from 50,000/- (Rupees Fifty thousand) to Rs.35,000/- (Rupees Thirty Five thousand) under section 112(a) of the Customs Act,1962.

10. The impugned Order in Appeal is modified as detailed above. Revision application is partly allowed on above terms.

11. So, ordered.

(Signature)
16/8/18

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 637/2018-CUS (SZ) /ASRA/Mumbai.

DATED 16.08.2018

To,

Shri. Shantilal Narendra Kumar
Old No. 42/16 New No. 16 Shree Flats,
Motilal Street, T. Nagar, Chennai 600 017.

Copy to:

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

ATTESTED

(Signature)
21/8/18

SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

