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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. 373/118/B/16-RA

Date of Issue 04/09/2018

ORDER NO. 644/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 27.08.2018 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 Sathick Ali

Respondent : Commissioner of Customs, Trichy.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 120/2016 dated 03.06.2016 passed by the Commissioner of Customs (Appeals-II), Trichy.



ORDER

This revision application has been filed by Shri Sathick Ali (herein referred to as Applicant) against the Order in Appeal C. Cus No. 120/2016 dated 03.06.2016 passed by the Commissioner of Customs (Appeals-II), Trichy.

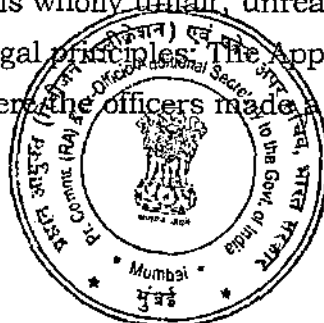
2. Briefly stated the facts of the case are that the applicant, arrived at the Trichy Airport on 27.09.2015. He was intercepted and examination of his baggage and person resulted in the recovery of Two Gold chains weighing 86 gms valued at Rs. 2,07,010/- (Rupees Two lakhs Seven thousand and ten)and cigarettes and tobacco products valued at Rs. 12,250/- (Twelve thousand Two hundred and fifty) and other assorted goods valued at Rs. 18,380/- (Eighteen thousand three hundred and eighty).

3. After due process of the law vide Order-In-Original No. 380/2015 Batch B dated 27.09.2015 the Original Adjudicating Authority ordered absolute confiscation of the gold, cigarettes and tobacco products 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. 36,000/- under Section 112 (a) of the Customs Act,1962. The other assorted goods were confiscated under Section 111 of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act but allowed to be redeemed on payment of Rs. 23,500/-under section 125 of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed an appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 120/2016 dated 03.06.2016 set aside the absolute confiscation of the gold and allowed its redemption on payment of Rs. 1,00,000/-. The absolute confiscation of the cigarettes and tobacco products Rs. 12,250/- (Twelve thousand Two hundred and fifty) was upheld, and the redemption fine of Rs. 23,500/- under Section 125 of the Customs Act,1962 was reduced to Rs. 10,000/- and partially allowed the Appeal giving relief to the applicant.

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

5.1 The order of the authorities is wholly unfair, unreasonable, unjust, biased, arbitrary and contrary to legal principles. The Applicant proceeded to the red channel department where the officers made a case by alleging



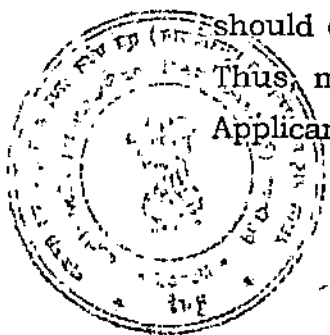
that he was not a eligible passenger; The Appellate authority should have considered that the department had no case of any misdeclaration , non declaration or concealment; The goods are freely importable and the Applicant has followed the provisions of section 77 of the Customs Act, 1962 and baggage rules; The jewelry weighing 100 grams was legally acquired by him out of his earnings and cannot be considered as commercial goods; The Appellate authority has failed to take into account that a true declaration was made by the Applicant; Eligible free allowance of Rs. 45,000/- was denied to the Applicant; The personal gold was declared with the intention of paying appropriate duty; As there is no charge of misdeclaration or concealment the Appellate authority should have considered submissions of the Applicant and the disproportionate penalty imposed be reduced.

5. A personal hearing in the case was scheduled to be held on 09.08.2018, the Advocate for the respondent Shri B. Kumar attended the hearing, he reiterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals 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 proper written declaration of goods was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the goods is justified.

7. However, the facts of the case state that the Applicant had not cleared the Green Channel. There is no allegation that the Applicant had tried to pass through the green channel. There is no allegation of concealment of the gold and the impugned gold was not indigenously concealed. The ownership of the gold is not disputed and the gold is not in primary form. 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.

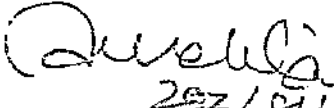


8. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. In view of the above facts, the Government is of the opinion that a more lenient view can be taken in the matter. The Applicant has pleaded for reduction of penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

9. The Government holds that the redemption fine of Rs. 1,00,000/- (Rupees One lakh) imposed on the impugned gold weighing 86 gms valued at Rs. 2,07,010/- (Rupees Two lakhs Seven thousand and ten) is appropriate. Government observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 36,000/- (Rupees Thirty six thousand) to Rs. 20,000/- (Rupees Twenty 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.


29/8/18
(ASHOK KUMAR MEHTA)

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

ORDER No. 644/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 27-08-2018

To,

Shri Sathick Ali
c/o M/s L. K. Associates
"Time Tower"Room No. 5, II Floor,
169/84, Gengu Reddy Road,
Egmore, Chennai- 600 008.

ATTESTED


S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner of Customs, International Airport, Trichy.
2. The Commissioner of Customs (Appeals-II), Trichy.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

