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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. 373/101/B/16-RA/52

Date of Issue : 18/09/2018

ORDER NO. 664/2018-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 Panwar Arjun

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. 126/2016 dated 29.02.2016 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Panwar Arjun (herein referred to as Applicant) against the Order in Appeal C. Cus:No. 126/2016 dated 29.02.2016 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 11.10.2015. He was intercepted and examination of his person and baggage and person resulted in the recovery of two gold chains weighing 378 gms valued at Rs.10,10,394/- (Rupees Ten lakhs Ten thousand Three hundred and Ninety Four). The gold was recovered from the waist lining of the blue jeans worn by the Applicant.

3. After due process of the law vide Order-In-Original No. 388/2015-16 - Airport dated 30.11.2015 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. 1,00,000/- under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the department filed an appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus:No. 126/2016 dated 29.02.2016 rejected the appeal of the Applicant.

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

5.1 The Applicant had purchased the gold chains for the marriage of his sister and not with any commercial interest; The entire proceedings were conducted in the Customs area without allowing the Applicant to avail legal assistance; The offence is not grievous enough to warrant absolute confiscation; No attempt was made by the Applicant to walk through the green channel; The non-declaration of the gold was a procedural lapse only due to ignorance; Considering these facts the personal penalty needs to be waived; None of the pleadings of the Applicant was brought on record and no Show Cause notice was issued to the Applicant before adjudication; The benefit of section 125 of the Customs Act, 1962 was not extended to the Applicant and the plea for release on (Section) fine and penalty was simply ignored.



4.2 The Revision Applicant cited case laws in his favour and pleaded that the order in Appeal be set aside and allow redemption of the goods on payment of appropriate redemption fine and set aside the personal penalty and render justice.

5. A personal hearing in the case was scheduled to be held on 12.08.2018, the Advocate for the respondent Shri R. V. Shetty attended the hearing, she reiterated the submissions filed in Revision Application and pleaded for re-export of gold and requested for release of the gold on payment of redemption fine and reduce the personal penalty. Nobody from the department attended the personal hearing

6. The Government has gone through the facts of the case. A 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 gold is justified.

7. However, the facts of the case state that the Applicant had not cleared the Green Channel. The impugned gold was kept in the waist lining of the trousers worn by the Applicant and though concealed it was not indigenously concealed. Import of gold is restricted not prohibited. There is no dispute regarding ownership of the gold. There are no previous offences registered against the Applicant. 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 for re-export on fine and reduced 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 378 gms valued at Rs.10,10,394/- (Rupees Ten lakhs Ten thousand Three hundred and Ninety Four) is allowed to be redeemed for re-export on payment of redemption fine of Rs. 4,00,000/- (Rupees Four lakhs) 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 Rs. 1,00,000/- (Rupees One lakh) to Rs.80,000/- (Rupees Eighty 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.

(Handwritten Signature)
27.8.18

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

ORDER No. 664/2018-CUS (SZ) /ASRA/MUMBAI

DATED 27.08.2018

To,

Shri Panwar Arjun
c/o Shri R. V. Shetty, Advocate
101-E, Sterling Court,
Next to Maheshwari Nagar,
MIDC, Andheri E,
Mumbai - 400 093.

ATTESTED

(Handwritten Signature)
18/9/18
SANKARSAN MUNDA
Joint Commissioner of Customs & C. Ex.

Copy to:

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

