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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. 371/86/B/14-RA/1266 Date of Issue 21.09.2018

ORDER NO. 670/2018-CUS (WZ) / ASRA / MUMBAI/ DATED 06.09.2018 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 Mohamed Zuhar Mohamed Zubair

Respondent : Commissioner of Customs, Mumbai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-352 & 353/14-15 dated 28.08.2014 passed by the Commissioner of Customs (Appeals), Mumbai – III.

ORDER

This revision application has been filed by Shri Mohamed Zuhar Mohamed Zubair (herein referred to as Applicant) against the Order in Appeal C. Cus No. MUM- CUSTM-PAX-APP-352 & 353/14-15 dated 28.08.2014 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated the facts of the case are that the applicant, arrived at the CSI Airport on 03.04.2014. He was intercepted and examination of his person resulted in the recovery of one gold bracelet and one gold chain weighing 210 grams totally valued at Rs. 5,45,932/- (Rupees Five lakhs Forty five thousand Nine hundred and Thirty two).

3. After due process of the law vide Order-In-Original No. JC/RR/ADJN/55/2014-15 dated 28.05.2014 the Original Adjudicating Authority ordered confiscation of the gold and currency under Section 111 (d) and e, (l), (m) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act. But allowed redemption of the gold on payment of Rs. 2,00,000/- and imposed penalty of Rs. 50,000/- under Section 112 (a) of the Customs Act,1962. A penalty of Rs. 5,000/- under Section 114AA of the Customs Act, 1962 was also imposed on the applicant.

4. Aggrieved by the said order, the Applicant filed an appeal before the Commissioner (Appeals) seeking reduction of fine and penalty. The Commissioner (Appeals) vide Order-In-Appeal MUM- CUSTM-PAX-APP-352 & 353/14-15 dated 28.08.2014 rejected the appeal of the Applicant.

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

5.1 The Applicant is a foreign national; The gold jewelry was recovered from his person; The gold was not concealed in any manner; This is the first time the Applicant has brought such goods; He was not aware of Indian custom rules; The gold was not for sale but was bonafide personal gold; The gold may kindly be allowed for re-export as re-export has been granted in a number of similar cases by the concerned authorities; In the case of Vigneswaran vs UOI in W.P. 6281of 2014 (I) dated 12.03.2014 has directed the revenue to unconditionally return the gold to the petitioner, observing that only

because of not declaring the gold, the absolute confiscation is bad under law, further stating, the only allegation is that she did not declare the gold.

5.2 The Revision Applicant prayed that the Honble Revisionary authority may be pleased to allow re-export of the gold and set aside or reduce the redemption fine and personal penalty and render justice.

6. A personal hearing in the case was scheduled to be held on 16.08.2018, the Advocate for the respondent Shri N. J. Heera attended the hearing, she re-iterated the submissions filed in Revision Application and pleaded for re-export of gold and requested for a lenient view to be taken in the matter. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. A written declaration of goods and currency 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.

8. However, the facts of the case state that the Applicant is a foreign national and had not cleared the Green Channel. The impugned gold was worn and carried by the Applicant and it was not indigenously concealed. Import of gold is restricted not prohibited. There is no dispute regarding ownership of the gold. The Applicant is a frequent traveler, but 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, moreso because she is a foreigner.

9. 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 Original adjudicating authority has rightly allowed the release of the gold on payment of redemption fine and penalty. The Applicant has pleaded for re-export on reduced redemption fine and penalty. Government also observes that the Applicant is a foreign national. Under the circumstances the Government is inclined to accept the plea for re-export. Government however observes that the redemption fine of

Rs. 2,50,000/- and penalty of Rs. 75,000/- on gold valued at Rs. 5,45,932/- (Rupees Five lakhs Forty five thousand Nine hundred and Thirty two) has to be appropriate in case the gold is allowed to be redeemed for re-export. The impugned Order in Appeal therefore needs to be set aside and the Order in original needs to be modified. Further, Government holds that no penalty is imposable under section 114AA of the Customs Act,1962 as this provision is not attracted in baggage cases.

10. The Government, allows re-export of the gold jewelry valued at Rs. 5,45,932/- (Rupees Five lakhs Forty five thousand Nine hundred and Thirty two) on payment of redemption fine of Rs.2,25,000/-(RupeesTwo lakhs Twenty five thousand) and penalty of Rs. 50,000/- (Rupees Fifty thousand). The penalty of Rs. 5,000/- (Rupees Five thousand) imposed under section 114AA of the Customs Act,1962 has been incorrectly imposed, the same is therefore set aside.

11. Revision application is partly allowed on above terms.

12. So, ordered.

6/9/18

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

ORDER No. 670/2018-CUS (WZ) /ASRA/Mumbai DATED 06.07.2018

To,

Shri Mohamed Zuhar Mohamed Zubair
C/o Shri N. J. Heera, Advocate
Ground Floor, 41, Mint Road,
Opp GPO,
Fort, Mumbai-1.

ATTESTED

21.9.18

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

Copy to:

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