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SPEED POST

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

F.No. 373/51/B/16-RA / 8563

Date of Issue 29.08.2020

ORDER NO. 68/2020-CUS (SZ)/ASRA/MUMBAI DATED 26.05.2020 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 Mohammed Kadavath Basheer

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. 164/2016 dated 31.03.2016 passed by the Commissioner of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by Shri Mohammed Kadavath Basheer (herein after referred to as the Applicant) against the order in appeal Order-in-Appeal C.Cus-I No. 164/2016 dated 31.03.2016 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case are that the Applicant, arrived from Abudhabi on 10.01.2016 and was intercepted at the Green Channel. On examination he was found carrying 2 gold rings and two gold bits totally weighing 70 grams valued at Rs. 1,32,825/- ( Rupees One lac Thirty two thousand Eight hundred and Twenty Five ). An examination of his checked in baggage resulted in the recovery of 40 cigarette cartons valued at Rs. 48,000/- ( Rupees Forty Eight thousand)

3. The Original Adjudicating Authority vide Order-In-Original No. 39/2016-Batch A dated 10.01.2016 ordered absolute confiscation of the impugned gold and cigarettes under Section 111 (d) (l) (m) and (o) of the Customs Act,1962, and imposed penalty of Rs. 19,000/- ( Rupees Nineteen thousand ) under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus-I No. 164/2016 dated 31.03.2016 rejected the appeal of the applicant.

5. Aggrieved with the above order the Applicant, has filed this revision application pleading against the absolute confiscation and relying on various orders passed in similar cases, stated that at the time of hearing gold was not a prohibited item and prayed that the Appellate order and absolute confiscation be set aside, or any other order as deemed fit and proper.

6. A personal hearing in the case was held in the case on 28.11.2019, the Advocate for the Applicant Shri Prakash Shingrani, attended the hearing, he reiterated that the gold under import was a mere 70 gms, valued at Rs. 1,32,825/- and sought release on redemption fine.



7. The facts of the case reveal that the Applicant had brought two gold rings and two gold bits totally weighing 70 grams. As the gold was carried in the undergarments and as a proper declaration was not made as required under section 77 of the Customs Act, 1962 the confiscation of the gold is upheld.

8. However, import of gold is restricted not prohibited and the quantity of gold under import is small. The gold was carried by the Applicant in his undergarment, though concealed it cannot be termed as ingenious concealment and therefore does not justify absolute confiscation. The Applicant does not have any previous cases registered in his name. The ownership of the gold is not disputed. The Hon'ble High Court of Madras in the case of N. Jayathilakan Versus Additional Secretary reported in [1987 (31) ELT 47 (Mad HC)] has held that "*redemption fine - option to pay fine in lieu of confiscation not given before confiscation of the goods - Impugned order liable to be quashed - case remanded to the Deputy Collector for invocation of section 125 of the Customs Act, 1962.*" In another case Hargovind Das K. Joshi v/s Collector of Customs reported in 1992 (61) E.L.T. 172 (S.C.), The Apex Court has pronounced that a quasi judicial authority must exercise discretionary powers in judicial and not arbitrary manner and remanded the case back for consideration under section 125(1) of the Customs Act, 1962. Reliance is also placed on the decision of the Honble High Court of Andhra Pradesh reported in Shaikh Jamal Basha Vs. GOI [1997 (91)ELT 277 (A.P.)] wherein it has been held that option to pay the fine in lieu of the confiscation of the goods is to be given to the importer. The Government therefore observes that absolute confiscation is harsh considering the facts and circumstances of the case. The Applicant has requested for release of the gold on redemption fine and penalty and the Government is inclined to accept the plea. The cigarettes, however were brought in commercial quantity. As the Cigarettes did not have the mandatory pictorial warnings the absolute confiscation of these Cigarettes is justified. The impugned Order in Appeal therefore needs to be modified.

10. Accordingly, the absolute confiscation of the gold is set aside. The impugned gold is allowed to be redeemed on payment of a redemption fine of





Rs. 25,000/- ( Rupees Twenty Five thousand ). The absolute confiscation of the cigarettes is upheld. The penalty imposed under section 112 (a) is appropriate.

11. Revision application is allowed on above terms.

12. So, ordered.

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

ORDER No. 68 /2020-CUS (SZ) /ASRA/MUMBAI DATED 26-05.2020

To,

Shri Mohammed Kadavath Basheer, Kadavath House, Kizhoor Padiahar, Po Chandragiri, Kalaad, Kasargod District, Kerala 671 317.

Copy To,

1. The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.
2. Shri Prakash Shingrani, Advocate, 12/334 New MIG Colony, Bandra ( E ) Mumbai - 51.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

**ATTESTED**

B. LOKANATHA REDDY  
Deputy Commissioner (R.A.)

