373/211/B/15-RA
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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
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F.No. 373/211/B/15-RA | 1904 Date of Issue 27.11.2018

ORDER NO. 748/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 28.09.2018 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 Balamurugan Thangaraj

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. 46 & 47/2015 dated 23.02.2015 passed by the Commissioner of Customs (Appeals), Chennai.

ORDER

This revision application has been filed by Shri Balamurugan Thangaraj (herein referred to as Applicant) against the Order in Appeal C. Cus-I No. 46 & 47/2015 dated 23.02.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 24.10.2014. He was intercepted and examination of his person resulted in the recovery of a gold bits weighing 48 gms valued at Rs. 1,22,139/- (Rupees One lakh Twenty two thousand One Hundred and Thirty nine). The gold was recovered from the false bottom of the check in bag brought by the Applicant.

3. After due process of the law vide Order-In-Original No. 1317/2014 Batch B dated 24.10.2014 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. 12,550/- under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) application who vide Order-In-Appeal C. Cus No. 46 & 47/2015 dated 23.02.2015 holding that there was no false bottom in the suitcase, allowed redemption of the gold on payment of Rs. 37,000/- as redemption fine and upheld the penalty imposed and allowed the appeal of the Applicant.

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

5.1 The order of the Commissioner (Appeals) having found that the goods are not liable for confiscation should have cancelled the penalty and reduced the redemption fine; The gold is valued at Rs. 1,22,139/- and the redemption fine , penalty and 36.05% of customs duty has come to Rs. 95,261/-; The redemption fine and penalty imposed is very high and oppressive when there is no concealment or non declaration; The gold being personal should have been released without redemption fine and penalty.

5.2 The Revision Applicant prayed for setting aside the Order in Appeal and release of the gold without redemption fine and penalty or pass such order as deem fit in the interest of justice and render justice.

6. A personal hearing in the case was scheduled to be held on 28.09.2018. Kumar Shri Abdul Nazeer , Advocate for the Applicant attended the hearing, he re-iterated 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.

7. Government has gone through the facts of the case. The Adjudication authority has observed that the gold was retrieved from the a false bottom of the check in bag. The Commissioner (Appeals) has negated the same as there was no mahazar drawn in the case, the checked in bags were not seized and section 111(e) of the Customs Act, 1962 was not invoked in the order in original. The Appellate order however, has upheld the confiscation of the gold because it was not declared as required under section 77 of the Customs Act,1962. But as there was no ingenious concealment and there are no past offences registered against the Applicant, the Commissioner (Appeals) has allowed redemption of the gold on payment of fine and penalty. The Revision Applicant has pleaded that for reduction of the redemption fine and penalty. Government however observes that the Applicant has already been treated leniently by the Commissioner (Appeals) and does not deserve further leniency. The Government is not inclined for any more

reliefs and agrees with the Appellate order on the quantum of redemption fine and penalty imposed. In view of the above, Government opines that the facts of the case does not warrant any interference in the order of the Commissioner (Appeals). The Revision Application therefore is liable to be dismissed and the order of the Commissioner (Appeals) liable to be upheld.

8. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order 46 & 47/2015 dated 23.02.2015 passed by the Commissioner of Customs (Appeals-I), Chennai is upheld as legal and proper.

9. Revision Application is dismissed

10. So, ordered.

28/9/18

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

ORDER No.748/2018-CUS (SZ) /ASRA/Mumbai DATED 28.09.2018

To,

Shri Balamurugan Thangaraj
c/o Shri Abdul Nazeer Advocate.
65, Baracah Road, Varadamma Garden Street,
Kilpauk,
Chennai – 600 010.

Copy to:

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