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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. 373/124-A/B/2016

8076

Date of Issue

27.11.2018

ORDER NO. 754/2018-CUS (SZ) / ASRA / MUMBAI / DATED 23.09.2018 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 Sanaulla Kadli

Respondent : Commissioner of Customs, Mangalore.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 283/2016 dated 31.03.2016 passed by the Commissioner of Customs (Appeals), Bengaluru.



ORDER

This revision application has been filed by Shri Sanaulla Kadli (herein referred to as Applicant) against the Order in Appeal C. Cus No. 283/2016 dated 31.03.2016 passed by the Commissioner of Customs (Appeals), Bengaluru.

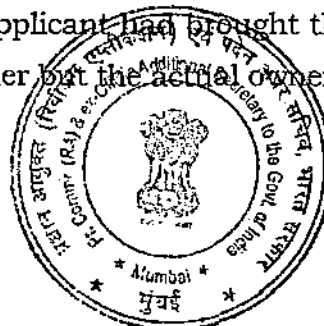
2. Briefly stated the facts of the case are that the applicant, arrived at the Mangalore Airport on 08.06.2013. He was intercepted and examination of his person resulted in the recovery 193 grams of gold jewelry valued at Rs. 4,03,128/- (Rupees Four lakhs Three thousand One Hundred and Twenty eight). The gold was wrapped around his forearms and using rubber bands.

3. After due process of the law vide Order-In-Original No. 11/2014 DC 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. 75,000/- under Section 112 (a) of the Customs Act, 1962. A penalty of Rs. 25,000/- under Section 114AA of the Customs Act, 1962 was also imposed on the Applicant.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) application who vide Order-In-Appeal 283/2016 dated 31.03.2016 passed by the Commissioner of Customs (Appeals), Bengaluru rejected the appeal of the Applicant.

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

5.1 The order of the appellate authority is not in conformity with principles of natural justice and equity; and spirit of the Baggage rules 1998, hence the same needs to be set aside in the interest of justice; The order of absolute confiscation was not at all justified; He had no malafide intention of evading the customs duty as wrongly alleged; The jewelry was worn by the applicant and it was not concealed in any manner whatsoever; The Commissioner (Appeals) Hyderabad has recently released undeclared gold concealed in the rectum; The Applicant had brought the gold from his own earnings and the statements were recorded forcibly and has retracted the should not be admissible in law; The Applicant had brought the gold from his own earnings and he was not a carrier but the actual owner of the gold.



5.3 The Revision Applicant cited judgments in support of his case and prayed for release of the gold under section 125 of the Customs Act, 1962 and reduce the personal penalty and thus render justice.

6. A personal hearing in the case was held on 19.09.2018, the Advocate for the respondent Shri O. M. Rohira attended the hearing he re-iterated the submissions filed in Revision Application pleaded for release of the gold under section 125 of the Customs Act, 1962. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. A written declaration of gold 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 carried by the applicant on his person. The gold was wrapped on his forearms but not indigenously concealed. Import of gold is restricted not prohibited. The Applicant is not a frequent traveller and does not have any previous offences registered against him. 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 penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified. Government however holds that Government however holds that when penalty is imposed under Section 112 no penalty is



required to be imposed under section 114AA of the Customs Act,1962 for the same offence. The penalty imposed under section 114AA of the Customs Act,1962 therefore is required to be set aside.

9. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 193 grams of gold jewelry valued at Rs. 4,03,128/- (Rupees Four lakhs Three thousand One Hundred and Twenty eight) is allowed to be redeemed for re-export on payment of redemption fine of Rs. 2,00,000/- (Rupees Two lakhs.) under section 125 of the Customs Act, 1962. Government observes that the facts of the case justify reduction in the penalty imposed. The penalty of Rs. 75,000/- (Rupees Seventy Five thousand) is reduced to Rs. 40,000/- (Rupees Forty thousand) under section 112(a) of the Customs Act,1962. The penalty of Rs. 25,000/- (Rupees Twenty Five thousand) imposed under section 114AA of the Customs Act,1962 is set aside, the rest of the order is upheld as legal and proper.

10. The impugned order stands modified to that extent. Revision application is partly allowed on above terms.

11. So, ordered.

Ashok Kumar Mehta
28/9/18

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

ORDER No. 754/2018-CUS (SZ) /ASRA/mumbai

DATED 28.09.2018

To,

To,

Shri Sanaulla Kadli
C/o Shri M. G. Rohira, Advocate,
148/5, Uphaar, 10th Road,
Khar (W),
Mumbai -52.

Copy to:

1. The Commissioner of Customs, Airport, Mangalore
2. The Commissioner of Customs (Appeals) Bengaluru
3. Sr. P.S. to AS (RA), Mumbai
4. Guard File.

