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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. 373/112/B/14-RA / 1245

Date of Issue 05.03.2018

ORDER NO. 81/2018-CUS (SZ)/ASRA/MUMBAI DATED 28.02.2018 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. Pradeepan Yogarasa.

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 No. 140-142/2014 dated 31.01.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Pradeepan Yogarasa (herein referred to as Applicant) against the order no C. Cus. 140-142/2014 dated 31.01.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, a Sri Lankan national, on arrival at the Chennai Airport was intercepted at the Green Channel while attempting to exit without baggage declarations at the Red Channel. Examination of his baggage resulted in the recovery of a assorted gold jewelry totally weighing 175.2 gms totally valued at Rs. 4,68,500/-. After due process of the law vide Order-In-Original No.964/2013 Batch C dated 16.08.2013 Original Adjudicating Authority ordered confiscation of the impugned goods under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act. The Original Adjudicating Authority also allowed redemption on payment of a fine of Rs. 2,00,000/- and imposed penalty of Rs. 1,00,000/- under Section 112 (a) of the Customs Act, 1962, duty extra.

3. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus No. 140-142/2014 dated 31.01.2014 rejected the appeal of the applicant.

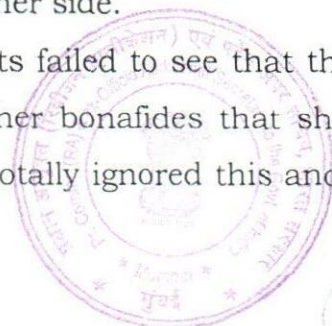
4. The applicant has filed this Revision Application interalia on the following grounds that;

4.1. The order of the appellate authority is bad in law, weight of evidence and probabilities of the case.

4.2. Both the Respondents failed to see that a true declaration was made by the Applicant and nothing was concealed or misdeclared.

4.3 The request for re-export of the gold was not considered and the value adopted is on the higher side.

4.4 Both the Respondents failed to see that the Applicant had opted for the Red Channel proving her bonafides that she has got dutiable goods. However the officers have totally ignored this and registered a case against the Applicant.



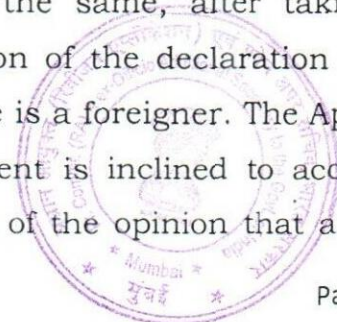
4.5 Both the Respondents have ignored orders of the High Court and Government Of India allowing re-export of the goods in similar matters.

The Revision Applicant prays that the Hon'ble Revision Authority may be pleased to set aside both the lower authorities orders and set aside fine of Rs. 2,00,000/- and penalty Rs. 1,00,000/- and order for re-export of the same and thereby render justice.

5. A personal hearing in the case was scheduled to be held on 14.02.2018, the Advocate for the respondent Shri K. Mohammed Ismail in his letter dated 12.02.2018 informed that his clients are unable to send their counsel all the way to Mumbai from Chennai and requested that the personal hearing may be waived and the grounds of the Revision Application may be taken as arguments for this Revision, and decide the cases as per relief sought for in the prayer of the Revision and oblige. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. The Applicant is a foreign national. However every tourist has to comply with the laws prevailing in the country visited. If a tourist is caught circumventing the law, he must face the consequences. A written declaration of gold was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and if not intercepted she would have gone without paying the requisite duty, under the circumstances confiscation of the gold is justified.

7. However, the facts of the case also state that the Applicant had not cleared the Green Channel exit. There is no allegation of ingenious concealment of the gold by the Applicant. This is the first offence of 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, more so because he is a foreigner. The Applicant prays for re-export of the gold and the Government is inclined to accept his prayer. Considering all factors, the Government is of the opinion that a lenient



view can also be taken while imposing redemption fine and penalty upon the applicant and therefore the Order in Appeal is liable to be modified.

8. Taking into consideration the foregoing discussion, Government modifies the Order in Appeal. Government allows redemption of the confiscated gold for re-export in lieu of fine. The Redemption fine in lieu of confiscation of the gold totally weighing 175.2 gms totally valued at Rs. 4,68,500/- (Rupees Four lacs, Sixty eight thousand, Five hundred) is reduced from Rs. 2,00,000/- (Rupees Two lac) to Rs. 1,25,000/- (Rupees One lac twenty five thousand) under section 125 of the Customs Act, 1962. Government also observes that facts of the case justify reduction in penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 1,00,000/- (Rupees One lac) to Rs. 60,000/- (Rupees Sixty thousand) under section 112(a) of the Customs Act, 1962.

9. The impugned Order in Appeal No. 140-142/2014 dated 31.01.2014 is modified as detailed above. Revision Application is partly allowed.

10. So, ordered.

Ashok Kumar Mehta
28.2.18

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

To,

Shri Pradeepan Yogarasa
S/o Shri Yogarasa,
28, Sarojini Street,
T. Nagar,
Chennai - 600 001.

True Copy Attested

S. R. Hirulkar
5-3-18

एस. आर. हिरुलकर
S. R. HIRULKAR

Copy to:

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

