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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. 373/65/B/15-RA / 2656

Date of Issue 09.04.2024

ORDER NO. 84/2021-CUS (SZ)/ASRA/MUMBAI DATED 30.03.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri P.P. Rajamanickam Kamatchi.

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. 1656/2014 dated 08.09.2014 passed by the Commissioner of Customs (Appeals), Chennai.

ORDER

This revision application has been filed by Shri P.P. Rajamanickam Kamatchi (herein referred to as Applicant) against the order C. CUS No. 1656/2014 dated 08.09.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri P.P. Rajamanickam Kamatchi at the Anna International Airport, Chennai on 21.03.2014 as she was exiting the green channel. She was found carrying a crude gold bangle in her baggage weighing 99 grams valued at Rs. 2,72,040/- (Rupees Two lakhs Seventy two thousand and forty).

3. After due process of the law vide Order-In-Original No. 361/2014-Batch A dated 21.03.2014 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (l) (m) and (o) of the Customs Act, 1962 and imposed penalty of Rs. 27,200/- (Rupees Twenty seven thousand two hundred) under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by this order the Respondent filed an appeal with the Commissioner of Customs (Appeals), The Commissioner (Appeals) set aside the order of absolute confiscation and allowed the gold bangle to be redeemed for re-export on payment of Rs. 1,50,000/- (Rupees One lakh Fifty thousand) as redemption fine without making any changes in the penalty imposed and partially allowed the appeal of the Respondent.

5. Aggrieved with the above order the Applicant department has filed this revision application interalia on the grounds that;

5.1 The order of the Commissioner of Customs is contrary to law and probabilities of the case.

5.2 The applicant also submit that, she is an eligible passenger to bring Gold Jewellery and to get it released on payment of duty as applicable for the passengers staying abroad for more than 6 months. The applicant submit that, he is working in Singapore under the Work Permit valid till December, 2014, and also with regard to the Work Permit issued by the Singapore.

5.3 The applicant states that, before going to the examination table, the Intelligence Officer intercepted the applicant and the baggage was checked and applicant made the correct declaration which was accepted by the Officers. The applicant states that there was no concealment of the goods in the baggage. The applicant had voluntarily opened the baggage and shown to the Customs Authorities.

5.4 The applicant states that, there is no intention on the part of applicant to take the goods into India, especially in view of the liberalized policy. The -applicant had complied with all the rules and regulations prevailing in the country. In fact the subject goods were shown to the authorities without any hesitation or concealment. The applicant submits that there was no intention or pre-mediated knowledge either to smuggle or to bring the goods into Indian territory and if any of the applicants act is construed as being violative of any rules and regulations or procedures prevailing in India, the applicant may be admonished on humanitarian grounds.

5.5 The Commissioner failed to note that, the above the goods were declared and were not concealed and were in the personal baggage of applicant.

5.6 The applicant had not attempted to import any of the goods into India in contravention of any rules and regulations prevailing in India.

5.7 The applicant states that, once having declared the baggage, Section 77 of the Customs Act, 1962, has been complied with. In view of the above fact Section 80 of the Customs Act comes into play.

5.8 The applicant states that there was no concealment of the goods in all the baggage The applicant had voluntarily opened all the baggage and shown to the Customs Authorities.

5.9 The applicant states that, as per the judgement reported in 27 STC 337, the Allahabad High Court held that the suspicion however strong cannot take the place of positive material and hence the confiscation by the Commissioner is bad in law.

5.10 The Supreme Court held in the Judgement reported in 42 STC 348 that strong suspicion, strange coincidence and state doubts cannot take the place of legal or positive proof and that the Commissioner is wrong in coming to the conclusion as if the applicant has been on a commercial mission.

5.11 The applicant submits that, in the Judgement reported in 25 STC 211 the Supreme Court held that to impose penalty the act should be deliberately in defiance of law.

5.12 The applicant submit that, the Commissioner himself had accepted that the appellant is a eligible passenger as per Notification No.31/2003, dated 1.3.2003, as amended to bring Gold Jewellery into India and hence, confiscating the gold jewellery and imposing fine and penalty is totally baseless and wrong.

5.13 The applicant submit that, she had stayed abroad and came to India after staying abroad for more than 6 months and it is a admitted fact that the applicant is an eligible passenger and hence, the gold jewellery must be allowed re-export without imposing any redemption fine and penalty.

5.14 Applicant submit that, the estimation of Margin of Profit is totally wrong and baseless and not according to the accepted formula of the department and Hon'ble Tribunal itself. If the correct formula is adopted there is no Margin of Profit and only a loss.

5.15 The applicant submit that, no work sheet has been furnished by the department to the applicant herein as to how the valuation been adopted or margin of profit been arrived at.

5.16 The applicant further submits that, the work done by the department is not correct and has on a wrong basis without following the normal procedures and as per the existing norms and also the Judgements of the Hon'ble Tribunals and High Courts.

5.17 The applicant submit that, the applicant had stayed abroad for more than 6 months and she is working there permanently with work permit and hence, the applicant is an eligible passenger which was not considered by the Commissioner of Customs (Appeals).

5.18 The Commissioner has failed to note that the correct market price and margin of profit in order to arrive at the redemption fine to be imposed on the applicant.

5.19 The applicant submits that, the other reasons given by the Commissioner is not sustainable in law and on facts.

5.20 The applicant reserves his right to urge additional grounds at the time of the hearing of this application.

The applicant therefore prays that this Honorable Additional Secretary may be pleased to set aside the order of the Commissioner of Customs (Appeals), pass an order to re-export the gold without redemption fine and penalty, since the applicant is an eligible passenger or any such an order be passed as deemed fit and proper in the facts and circumstances of the case.

6. In view of the above, personal hearings in the case was scheduled on 12.03.2021. Shri A. K. Jayaraj Advocate appeared online on behalf of the Applicant. He submitted that she was an eligible passenger and was carrying one bangle kada. There was no ingenious concealment therefore the redemption fine imposed is exceedingly high that too for re-export. He requested for release of the goods on nominal redemption fine and penalty. Nobody attended the hearing on behalf of the department.

7. The Government has gone through the case records. It is observed that the respondent did not declare the gold chain as required under section 77 of the Customs, Act, 1962 and had opted for the green channel. Non-declaration of the gold jewelry and attempt to escape from the law without payment of duty or appropriate accountal of the gold jewelry makes it liable to confiscation. Therefore the confiscation of the gold jewelry is justified.

8. The impugned gold was in jewelry form ie it was a gold kada. There are no allegations that the gold was ingeniously concealed. The Applicant is an eligible passenger to import gold. The quantity of gold jewelry under import is small. There are no allegations that the Applicant is a habitual offender and was involved in similar offences earlier. The facts of the case indicate that it is a case of non declaration of gold jewelry, rather than a case of smuggling for commercial considerations. Under the circumstances, the seriousness of the misdemeanor is required to be kept in mind when imposing quantum of fine and penal liabilities.

9. The Applicant has prayed for reduction of redemption fine and penalty. The Government notes that the redemption fine of Rs. 1,50,000/- (Rupees One lakh Fifty thousand) on gold jewelry valued at Rs. 2,72,040/- (Rupees Two lakhs Seventy two thousand and forty) is more than 55% of the value of the gold. Government opines a reasonable reduction is due in the interest of justice. The order of the Appellate authority is therefore required to be modified to that extent.

The redemption fine is accordingly reduced to Rs.50,000/- (Rupees Fifty thousand). The penalty of 27,200/- imposed under Section 112 (a) of the Customs Act,1962 is appropriate.

10. Revision application is accordingly disposed.

Shrawan
20/03/21
(SHRAWAN KUMAR)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 84/2021-CUS (SZ) /ASRA/

DATED 30-03-2021

To,

1. Shri P.P. Rajamanickam Kamatchi, Old Main Road, Thozudur, Tittagudi, Cuddalore - 606 303.
2. The Commissioner of Customs(Airport) ,New Custom House, Meenambakkam, Chennai.

Copy to:

3. Shri A. K. Jayaraj, Advocate, New no. 234, Old no. 217, Thambu Chetty Street, I & II Floor, Chennai - Chennai - 600 001.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.