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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. 373/89/B/2018-RA | 2147 Date of Issue 29.11.2018

ORDER NO.881 /2018-CUS (SZ) / ASRA / MUMBAI/ DATED 26.10.2018 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 Manivannan Navatatanam

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. 26/2017 dated 14.02.2018 passed by the Commissioner of Customs (Appeals-I), Chennai.

ORDER

This revision application has been filed by Shri Manivannan Navatatanam (herein referred to as Applicant) against the Order in Appeal C. Cus-I No. 182-184/2017 dated 28.09.2017 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case are that the applicant, a Sri Lankan national arrived at the Chennai Airport on 03.02.2017. He was intercepted at the exit after clearing the Green Channel. Examination of his person resulted in the recovery of one gold chain and one gold kada totally weighing 200 gms valued at Rs. 5,94,800/- (Rupees Five lakhs Ninety Four thousand Eight hundred). The gold was worn by the Applicant on his person.

3. After due process of the law vide Order-In-Original No. 37/2017-18-AIRPORT dated 17.05.2017 the Original Adjudicating Authority ordered 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, but allowed redemption of the gold for re-export on payment of Rs. 1,00,000/- and imposed penalty of Rs. 55,000/- under Section 112 (a) of the Customs Act,1962. A penalty of Rs. 5,000/- was also imposed under section 114AA 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-I No. 182-184/2017 dated 28.09.2017 set aside the penalty of Rs. 5,000/- imposed under section 114AA of the Customs Act,1962 and partially allowed the Appeal on the Applicant.

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

5.1 the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The Appellate authority has simply glossed over the judgements and the points raised in the appeal grounds and reason has been given to reject the Appeal; The impugned gold has been purchased by the Applicant and the same is his personal belongings; The ownership of the gold is not disputed and there is no ingenious concealment; The baggage rules will apply only if goods are found in the baggage, since the Applicant was wearing the gold the

violation of baggage rules does not arise; The eligibility question does not arise for a foreign national; In the case of Vigneswaran vs UOI in W.P. 6281of 2014 (I) dated 12.03.2014 has directed the revenue to unconditionally return the gold to the petitioner, observing that only because of not declaring the gold, the absolute confiscation is bad under law, further stating, the only allegation is that she did not declare the gold.

4.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing re-export of the gold on payment of nominal redemption fine and reduced personal penalty.

5. A personal hearing in the case was held on 25.09.2018, the Advocate for the respondent Shri Palanikumar attended the hearing. He re-iterated the submissions filed in Revision Application and pleaded that the redemption fine and penalty be reduced. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. It is a fact that the Applicant was intercepted at the exit after clearing the Green Channel. The gold was not declared 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 gold was worn by the Applicant and it was not ingeniously concealed. The gold is claimed by the Applicant and there is no other claimant. There are no previous offences registered against the Applicant. Gold is a restricted item and not prohibited. The gold is not in primary form. 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, moreso because she is a foreign national.

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. Government notes that the Adjudicating Authority has rightly exercised his discretion of allowing the gold for re-export on payment of redemption fine and penalty. The Appellate Authority has also rightly upheld the order of the adjudicating authority setting aside the penalty imposed under section 114AA. The redemption fine and penalty is also adequate.

The Government is therefore disinclined to interfere with the order of the Commissioner(Appeals). The Revision Applicant is therefore liable to be dismissed.

10. The Revision Application is accordingly dismissed.

11. So, ordered.

26.X.18

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

ORDER No.881/2018-CUS (SZ) /ASRA/MUMBAI DATED 26.10.2018

To,

Shri Manivannan Navatatanam
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai - 600 001.

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.