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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. 373/70/B/2018-RA | 2470 Date of Issue 29.11.2018

ORDER NO. 883/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 29.10.2018 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 Jeyakumar Kandiah

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 218 & 219/2017 dated 29.12.2017 passed by the Commissioner of Customs (Appeals) Chennai.

ORDER

This revision application has been filed by Shri Jeyakumar Kandiah (herein referred to as Applicant) against the Order in Appeal 218 & 219/2017 dated 29.12.2017 passed by the Commissioner of Customs (Appeals) Chennai.

2. Briefly stated the facts of the case are that the applicant a Sri Lankan National arrived at the Chennai Airport on 23.02.2017. He was intercepted at the exit after clearing the Green Channel and examination of his person resulted in the recovery of a four gold chains weighing 503 grams valued at Rs. 14,21,981/- (Rupees Fourteen lakhs Twenty one thousand and Nine hundred and Eighty one).

3. After due process of the law vide Order-In-Original No. 99/2017-18-AIRPORT dated 11.09.2017 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. 1,40,000/- under Section 112 (a) of the Customs Act,1962. A penalty of Rs. 60,000/- 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 No. 218 & 219/2017 dated 29.12.2017 set aside the penalty of Rs. 60,000/- imposed under section 114AA of the Customs Act,1962 and partially allowed the Appeal and rejected the rest of 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) 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 Applicant had worn the gold chains and asked for the CCTV footage available, but was informed that there is no CCTV footage available in the AIU room; It is not a case of concealment; The adjudication authority has stated that the Applicant was given numerous chances to declare the gold, however the same is not established through evidence; The question of eligibility is not applicable to foreigners; Baggage rules will apply only if the goods are found in

baggage; Gold is a dutiable and not prohibited under the Custom Act, 1962; The Hon'ble Supreme Court (full bench)in the case of Om Prakash vs UOI states that the main object of the enactment of the said Act was the recovery of Excise Duties and not really to punish for infringement of its provisions; Section 111 (d) (l) (m) and (o) are not applicable in the case; In the case of Vigneswaran vs U01 in W.P. 6281of 2014 (l) 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.;

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

6. 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 gold be allowed for re-export on redemption fine and penalty. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. It is a fact that 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.

8. However, the facts of the case state that the gold 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 inspite of being a frequent flier. Gold is restricted but 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 he is a foreign citizen.

9. 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 opines 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.

10. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing weighing 503 grams valued at Rs. 14,21,981/- (Rupees Fourteen lakhs Twenty one thousand and Nine hundred and Eighty one) is allowed to be redeemed for re-export on payment of redemption fine of Rs. 5,00,000/- (Rupees Five lakh) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 1,50,000/- (Rupees One lakh fifty thousand) to Rs.1,00,000/- (Rupees One lakh) under section 112(a) of the Customs Act,1962.

11. The impugned Order in Appeal stands modified to that extent. Revision application is partly allowed on above terms

12. So, ordered.

29/X/18

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

ORDER No.883/2018-CUS (SZ) /ASRA/MUMBAI DATED 31.10.2018

To,

Shri Jeyakumar Kandiah
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, Airport, Chennai.
2. The Commissioner of Customs (Appeals), Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.