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GOVERNMENT OF INDIA
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F.No. 373/49/B/17-RA

/ 2161

Date of Issue

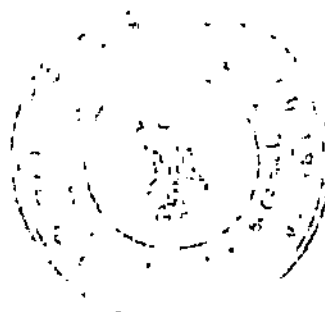
29.11.2018

ORDER NO. 909/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 31.10.2018 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 Tamizhselvan

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 345/2016 dated 28.10.2016 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Tamizhselvan (herein referred to as Applicant) against the Order in Appeal 345/2016 dated 28.10.2016 passed by the Commissioner of Customs (Appeals) Chennai.

2. Briefly stated the facts of the case are that the applicant arrived at the Chennai Airport on 08.02.2016. He was intercepted while walking out through the exit of the arrival hall and examination of his person and baggage resulted in the recovery of two gold kadas and a gold chain weighing 434 grams valued at Rs. 12,83,772/- (Rupees Twelve lakhs Eighty three thousand Seven hundred and Seventy two). The Kadas were worn on each wrist and the gold chain was recovered from his pant pockets.

3. After due process of the law vide Order-In-Original No. 92/2016-17 – AIRPORT dated 17.09.2016 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. 1,20,000/- under Section 112 (a) 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. 345/2016 dated 28.10.2016 rejected 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; As the gold chain and kada was worn by the Applicant and it amounts to declaration; The Applicant is an NRI and is an eligible passenger to import gold upto 1 kg; Applicant had not crossed the Customs barrier and as such the import had not consummated; ; Baggage is not confined to merely bonafied baggage within the meaning of Section 79 of the Customs Act, 1962; Gold is not prohibited as per EXIM policy; The Applicant did not bring the gold for disposal in India; The lower authority ought to have seen that the Circular No. 72/98 dated 24.09.1998 clearly states that personal effects would include personal jewelry; The lower authority ought to have seen that gold is not a prohibited item and the non-consideration of Section 125 of the Customs Act, 1962



is against the law and it is mandatory to release the gold on redemption fine; the Apex court in the case of Hargovind Das vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has pronounced that the quasi judicial authorities should use the discretionary powers in a judicious and not an arbitrary manner and option to allow redemption is mandatory. The Appellate authority ought to have allowed redemption and re-export as per the request of the Applicant; Higher penalty of Rs. 1,20,000/- ought not to have been imposed.

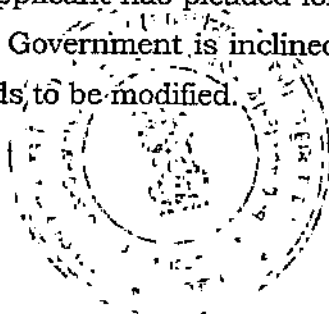
5.2 The Revision Applicant cited various assorted judgments in support of allowing the gold for re-export on payment of nominal redemption fine and reduced personal penalty.

6. A personal hearing in the case was held on 25.10.2018, the Advocate for the respondent Shri A. Ganesh 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. Gold is restricted but not prohibited. The Applicant is an NRI and is eligible to bring 1 kg of gold. 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.

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 434 grams valued at Rs. 12,83,772/- (Rupees Twelve lakhs Eighty three thousand Seven hundred and Seventy two) is allowed to be redeemed for re-export on payment of redemption fine of Rs.4,50,000/- (Rupees Four lakhs Fifty thousand) 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. 1,20,000/- (Rupees One lakh Twenty thousand) to Rs.1,00,000/- (Rupees One lakh) under section 112(a) of the Customs Act,1962.

11. The impugned Order in Appeal 345/2016 dated 28.10.2016 stands modified to that extent. Revision application is partly allowed on above terms.

12. So, ordered.

Ashok Kumar Mehta
31/10/18

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

ORDER No. 909/2018-CUS (SZ) /ASRA/MUMBAI

DATED 31.10.2018

To,

Shri Tamizhselvan
C/o A. Ganesh, Advocate,
F. Block 179, IV Street,
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Chennai - 600 102.

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.

