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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//15/B/2018-RA

Date of Issue 29.11.2018

ORDER NO. 911/2018-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 Syed Ahmed Sathath

Respondent: Commissioner of Customs, (Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal C. Cus
I No. 48/2018 dated 28.03.2018 passed by the
Commissioner of Customs (Appeals), Chennai.

ORDER

This revision application has been filed by Shri Syed Ahmed Sathath (herein referred to as Applicant) against the order C. Cus I No. 48/2018 dated 28.03.2018 passed by the Commissioner of Customs (Appeals), Chennai.

2. On 20.10.2017 the respondent arrived at the Chennai Airport. Examination of his person resulted in the recovery of one gold chain weighing 548 gms valued at Rs. 16,25,368/- (Rupees Sixteen lakhs Twenty Five thousand three sixty eight). The gold chain was recovered from the under garments of the Respondent.

3. After due process of the law vide Order-In-Original No. 197/2017-18-AIRPORT dated 11.01.2018 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962, and imposed penalty of Rs. 1,60,000/- under Section 112 (a) of the Customs Act,1962 on the Respondent. A penalty of Rs. 20,000/- 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) who vide Order-In-Appeal C.Cus No. 37/2018 dated 19.03.2018 set aside the penalty of Rs. 20,000/- imposed under section 114AA of the Customs Act,1962 and partially allowed the Appeal of the Applicant.

5. Aggrieved with the above order the Applicants have filed this revision application interalia on the grounds that;

5.1 The order of the appellate authority is bad in law, weight of evidence and probabilities of the case; Ownership of the gold is not disputed and there is no ingenious concealment; The Applicant has been staying in the UAE for the last 10 years and had saved the money to buy gold and distribute it to his sisters; The gold was purchased from his own earnings as repair officer in Emirates airlines; Gold is not a prohibited item and according to liberalized policy can be released on redemption fine and penalty; 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;

5.2 The Revision Applicant prays that the Hon'ble Revision Authority may be pleased to set aside both the lower authorities orders and allow the gold for re-export on lesser redemption fine and penalty and thereby render justice.

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 redemption fine and penalty be reduced. Nobody from the department attended the personal hearing.

7. The Government has gone through the case records it is observed that the gold bars were recovered from the respondents undergarments and it was not declared by the Respondent and therefore, confiscation of the gold is justified. However the gold was not indigenously concealed. Ownership of the gold is not disputed. Import of gold is restricted not prohibited. There are no instances of any previous offences on behalf of the respondent. Absolute confiscation in such a case is a very harsh and would be unjustified. 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. The Applicant has pleaded the the gold be released for redemption for re-export on payment of redemption fine and penalty and the Government therefore is inclined to accept the plea. The absolute confiscation of the gold therefore needs to be set aside and he impugned Order in Appeal is therefore liable to be modified.

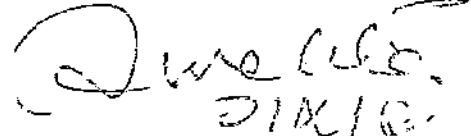
8. The impugned Order in Appeal is modified as below. The Government allows redemption of the gold, weighing 548 grams valued at Rs. 16,25,368/- (Rupees Sixteen lakhs Twenty Five thousand three sixty eight). for re-export on payment of redemption fine of Rs. 6,00,000/- (Rupees Six lakhs) under section 125 of the Customs Act, 1962. Considering the value of the impugned gold the penalty of Rs. 1,60,000/- (Rupees One lakh sixty thousand) imposed.



under section 112(a) of the Customs Act,1962 on the Respondent is appropriate.

9. Revision application is partly allowed on above terms.

10. So, ordered.



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

ORDER No. 911/2018-CUS (SZ) /ASRA/MUMBAI

DATED 31.10.2018

To,

Shri Syed Mohammed Ali
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), Custom House, Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
- ~~4. Guard File.~~
5. Spare Copy.