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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. 373/48/B/17-RA/2199

Date of Issue 29.11.2018

ORDER NO. 920/2018-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 Selvakumar

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 321/2016 dated 29.09.2016 passed by the Commissioner of Customs (Appeals) Chennai.

ORDER

This revision application has been filed by Shri Selvakumar (herein referred to as Applicant) against the Order in Appeal No. 321/2016 dated 29.09.2016 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 30.07.2017. He was intercepted and examination of his person and baggage resulted in the recovery of a gold chain weighing 248 grams valued at Rs. 7,00,104/- (Rupees Seven lakhs One hundred and four). The gold chain was recovered from the innerwear worn by the Applicant.

3. After due process of the law vide Order-In-Original No. 64/2016-17 – AIRPORT dated 30.07.2016 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. 70,000/- 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. 321/2016 dated 29.09.2016 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; The Applicant had proceeded toward the Red channel; Applicant had not crossed the Customs barrier and as such the import had not consummated; The Applicant was not allowed to declare the goods under section 77 of the Customs Act,1962; Baggage is not confined to merely bonafied baggage within the meaning of Section 79 of the Customs Act,1962; 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 margin of profit works out to Rs. 3,500/- as per market value of gold @Rs. 3085/-; Gold is not prohibited as per EXIM policy; The gold was purchased for his wife and for their children; 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.

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 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.

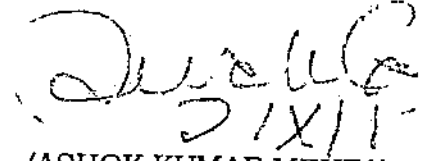
9. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. In view of the above facts, the Government opines that absolute confiscation of the gold is harsh and unjustified 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 weighing 248 grams valued at Rs. 7,00,104/- (Rupees Seven lakhs One hundred and four) is allowed to be redeemed for re-export on payment of redemption fine

of Rs. 2,50,000/- (Rupees Two 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. 70,000/- (Rupees Seventy thousand) to Rs. 50,000/- (Rupees Fifty thousand) 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.



(ASHOK KUMAR MEHTA)

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

ORDER No. 920/2018-CUS (SZ) /ASRA/MUMBAI

DATED 31.10.2018

To,

Shri Selvakumar
C/o A. Ganesh, Advocate,
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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.