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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

F.No. 373/49/B/16-RA

2/94

Date of Issue

29.11.2018

ORDER NO. 926/2018-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 Jambu Kumar

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus-I No. 340/2015 dated 29.06.2015 passed by the Commissioner of Customs (Appeals) Chennai.

ORDER

This revision application has been filed by Shri Jambu Kumar (herein referred to as Applicant) against the Order in Appeal C.Cus-I No. 340/2015 dated 29.06.2015 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 05.10.2014. He was intercepted as he was walking out of the green channel and examination of his person and baggage resulted in the recovery gold buckle worn on his belt weighing 229 grams valued at Rs. 6,17,842/- (Rupees Six lakhs Seventeen thousand Eight hundred and Forty two ).

3. After due process of the law vide Order-In-Original No. 1262/2014- AIR dated 23.03.2015 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. 50,000/- 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. 340/2015 dated 29.06.2015 rejected the Appeal of the Applicant.

5. The applicant has filed this Revision Application alongwith an application for condonation of delay of 2 months 15 days on account of illness, 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; The gold buckle worn by the Applicant was visible to the naked eye; The buckle was made as an antique finish and not painted black; Nowadays there are gold watches, Gold frame spectacles are parts of fashion; Applicant had not crossed the Customs barrier and as such the import had not consummated; Baggage is not confined to merely bonafide baggage within the meaning of Section 79 of the Customs Act,1962; As the gold buckle was visible to the naked eye it ought to be taken as a declaration under section 77 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; There was no mensrea on part of the Applicant so as to have deserved higher penalty; The Applicant was not given the opportunity to declare the gold; The Customs Officers should guide passengers at the airport and allow Re-export of such goods as per Section 80 of the Customs Act, 1962.

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. In the interest of justice the delay of 2 months 15 days is condoned. 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 that was recovered was in the form of a buckle worn on the belt of the Applicant and it was visible to the naked eye and cannot be termed as ingeniously concealed. There is no allegation that the Applicant had cleared the green channel, in fact the Applicant alleges that he was intercepted at the metal detector and did not get an opportunity to declare the gold; 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.

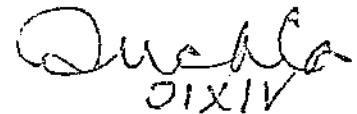
9. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. In view of the above facts, the Government opines that absolute confiscation of the gold is harsh and unjustified and therefore a lenient view can be taken in the matter. The Applicant has pleaded for redemption of the gold 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 229 grams valued at Rs. 6,17,842/- (Rupees Six lakhs Seventeen thousand Eight hundred and Forty two) is allowed to be redeemed on payment of redemption fine of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand Only) under section 125 of the Customs Act, 1962. Government observes that the penalty of Rs. 50,000/- (Rupees Fifty thousand ) imposed on the Applicant under section 112(a) of the Customs Act, 1962 is appropriate. The dues as required shall be payable in terms of Section 125 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. <sup>926</sup>926/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 31-10-2018

To,

Shri Jambu Kumar  
C/o A. Ganesh, Advocate,  
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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.