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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. 373/75/B/16-RA / 2219

Date of Issue 03.12.2018

ORDER NO. 974 /2018-CUS (SZ) / ASRA / MUMBAI DATED 29.11.2018 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 Venkata Rangan Maddali

Respondent : The Principal Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 154/2016 dated 24.03.2016 passed by the Commissioner of Customs (Appeals I), Chennai.



ORDER

This revision application has been filed by Shri Venkata Rangam Maddali (herein referred to as Applicant) against the Order in Appeal No 154/2016 dated 24.03.2016 passed by the Commissioner of Customs (Appeals 1), Chennai.

2. Shri Venkata Rangam Maddali (herein referred to as "the applicant") was intercepted by the Customs Officers at the Anna International Airport, Chennai on his arrival by Air Aisa Flight No. AK-11 from Kuala Lumpur on 11.10.2015. The respondent had not declared any value in Customs Declaration Form. On enquiry as to whether he possessed any dutiable goods, the respondent replied in negative. During the personal search of the applicant, the Customs Officers recovered four semi finished gold chains totally weighing 354.5 gms from inner pocket of pant worn by him. The four gold chains so recovered were valued at Rs.9,38,205/- (Rupees Nine Lakh Thirty Eight Thousand Two Hundred Five Only) . On enquiry, the respondent informed that said four gold chains were given to him by an unknown person outside Kuala Lumpur Airport before his travel to Chennai to be handed over to another person at Chennai Airport. The Customs officers seized said four gold chains under reasonable belief that the applicant had attempted to smuggle them in India.

3. The Original Adjudicating Authority vide Order-in-Original No. 376/2015-16 -AIRPORT dated 30.11.2015 ordered absolute confiscation of four semi finished gold chains totally weighing 354.5 gms valued at Rs. 9,38,205/- under Section 111 (d) & (j) of the Customs Act, 1962. The Adjudicating Authority also imposed penalty of Rs. 90,000/- under Section 112 (a) of the Customs Act, 1962 on the applicant.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner of Customs (Appeals-1), Chennai. The appellate authority upheld the original order and rejected the appeal.



5. Aggrieved with the above order the applicant has filed this revision application on the grounds that;

- 5.1 the applicant had submitted before the adjudicating authority that his son was employed in Malaysia and the gold chains brought by the applicant were for the applicant's wife and daughters as a present from his son.
- 5.2 the gold chains were found in his pocket and not concealed.
- 5.3 the gold is not prohibited commodity and hence not liable for absolute confiscation.

6. A personal hearing in the case was fixed on 15.11.2018 and the same was attended by Shri B. Satish Sundar & Shri V. Santaram, Advocates on behalf of the applicant. The advocates submitted brief written note during personal hearing which is taken on record. They also pleaded that order in appeal be set aside and gold be redeemed for re-export on payment of fine and penalty.

7. The Government has gone through the facts of the case. The applicant was walking out of green channel; he was intercepted by the Customs Officers. The applicant had filled up the column in Customs Declaration Form as NIL. On subsequent search of the applicant resulted in recovery of impugned four semi finished gold chains totally weighing 354.5 gms valued at Rs. 9,38,205/-. Since the applicant did not declare the impugned gold as required under Section 77 of the Customs Act, 1962, the confiscation of the same is justified in the instant case.

8. However, the facts of the case state that the impugned gold is claimed by the applicant and there is no other claimant. Thus the Government observes that the ownership of gold is not disputed. The gold chains were recovered on person from the pockets of the pant worn by the applicant and not ingeniously concealed. Under the circumstances absolute confiscation of the impugned gold chains appears to be harsh option. There is no reference of any previous offence against the applicant. Thus mere non submission of declaration cannot be held against the applicant.



9. There are 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. Under the circumstances, Government is of the opinion that a lenient view can be taken in the matter. The applicant has pleaded for re-export of the gold and the Government is inclined to accept the plea. The order of absolute confiscation of the gold in the impugned Order in Appeal therefore needs to be modified and the confiscate gold is liable to be allowed for re-export on payment of redemption fine and the penalty imposed could be reduced to meet the ends of justice.

10. Taking into consideration the forgoing discussion, Government allows redemption of the confiscated gold for re-export in lieu of fine. The four semi finished gold chains totally weighing 354.5 gms valued at Rs. 9,38,205/- (Rupees Nine Lakh Thirty Eight Thousand Two Hundred Five Only) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 3,50,000/- (Rupees Three Lakh Fifty Thousand Only) under Section 125 of the Customs Act, 1962. The penalty imposed under Section 112(a) of the Customs Act, 1962 is reduced from Rs. 90,000/- to Rs. 70,000/- (Rupees Seventy Thousand Only).

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

12. So, ordered.


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

ORDER No. 974/2018-CUS (SZ) /ASRA/ Mumbai DATED 29-11-2018

To,

1. The Commissioner of Customs, Chennai-1,
New Custom House, Meenambakkam,
Chennai- 600 027.



2. Shri Venkata Rangam Moddali,
No. 4-26, Peddha Bazaar, Palukuru,
Andhra Pradesh - 523 105.

Copy to:

1. The Commissioner of Customs (Appeals-I), 60, Rajaji Salai,
Customs House, Chennai- 600 001.
2. M/s Aum Associates. Advocates,
Suite No. 25, 1st floor, R.R. Complex No.1,
Murthy Lane, Rattan Bazaar,
Chennai - 600 003.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File,
5. Spare Copy.

