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WPA 3211 of 2020

Ashok Kumar Chirimar
Vs
Union of India & Ors.

Mr. Shovendu Banerjee,
Mr. Soumyajit Mishra
... For the Petitioner.
Mr. Bhaskar Prosad Banerjee,
Mr. Abhradip Maity
... For the Respondents.

Affidavit-in-opposition filed by the respondents be kept with the record.

Heard learned Advocates appearing for the parties.

This is an old matter and running in the list for a long time.

The subject matter of challenge in this writ petition arises out of an impugned adjudication order dated 15th October, 2017 passed by the Assistant Commissioner of Customs making an order for absolute confiscation of the goods in question being gold bar having a quantity of 158.32 grams which the petitioner was carrying while traveling from Singapur to India, who is a permanent resident of Singapur and at the time of his traveling he was having all the documents with him in connection with the gold in question. It is the allegation of the petitioner that in spite of having all the papers relating to the gold in question, the impugned order of absolute confiscation of the goods was passed with a penalty of Rs.50,000/-

and by assessing the value of gold as Rs.4,53,426.50. The aforesaid absolute impugned order was further challenged before the Appellate Authority which confirmed the order of the Adjudicating Authority and the petitioner being aggrieved by the order of the Appellate Authority has preferred revisional application before the Revisional Authority which disposed of the said revisional application by an order dated 10th of October, 2019 by modifying the order of the Adjudicating Authority by recording detailed, reasoned order particularly paragraph 5 of the aforesaid order of the Revisional Authority is relevant which is quoted as hereunder :

> "On examination of the relevant case records, the Commissioner (Appeals)'s order and the Revision application, it is observed that in the instant case, it is evident that applicant is the bona fide owner of impugned goods and the applicant had requested the Commissioner (Appeals) to allow the re-export of impugned goods. Section 80 of the Customs Act, 1962 provides that the detained imported goods can be re-exported at the request of the passenger where he/she is returning from India to a foreign country. Thus, apart from declaration of the imported goods at the time of arrival of passenger, return of the passenger to the foreign country after a short visit to India as a tourist or otherwise is a crucial condition for re-export of such goods. The applicant has contended that he was not given an opportunity to declare the gold items in writing at the time of his arrival at Kolkata Airport. No baggage declaration had been filed by him under Section 77 of the Customs Act, 1962 since the goods were intercepted by the customs after immigration before the applicant went to green channel. There is no finding to the contrary in the order of lower adjudicating authority or in the Commissioner (Appeals) order on the aforesaid contention of the applicant. Therefore the applicant's contention regarding non-declaration under Section 77 of the

Customs Act, 1962 is accepted. The applicant returned after a short visit to India.

Moreover, such non-declarations by foreigners and NRIs have been condoned in past by this authority itself. Reliance is placed on order no.56/18-Cus dated 02.04.2018, passed by the Revisionary Authority in a similar matter.

Considering these facts, the Government holds that the re-export of the confiscated gold biscuits can be allowed in the present case. Hence, re-export of the impugned gold items are allowed on payment of redemption fine of Rs.2,00.000/-(Two lakhs only) under Section 125 of the Customs Act, 1962. The penalty of Rs.50,000/-(Fifty thousand only) as ordered by the Assistant Commissioner and upheld by the Commissioner (Appeals) on the applicant under Section 112 of the Customs Act, 1962 is upheld. The above fine and penalty should be paid within 30 days of the receipt of the order."

Petitioner submits that the aforesaid order of the Revisional Authority by which the petitioner was asked to re-export the impugned gold item on condition of making payment of redemption fine of Rs. 2 lakh and a penalty of Rs.50,000/- was not further challenged by the Revenue Authority before any higher forum. Petitioner further submits that the condition of the aforesaid order of the Revisional Authority was complied by the petitioner by making payment of penalty within time but there was a delay of 15 days in making payment of redemption fine.

Considering the facts and circumstances of the case as appears from record including the order of the Revisional Authority by which it has been held that the petitioner was a bona fide owner of the impugned gold and that the petitioner himself was ready and willing to re-export of the goods in question and that having all valid document with him, I am of the considered view that the action of the respondents/Customs Authority concerned in not releasing the goods in question in spite of the fulfillment of condition imposed by the Revisional Authority by making payment of redemption fine though by a delay of 15 days and penalty of Rs.50,000/- within time and that the respondents authority concerned has not challenged the aforesaid order of the Revisional Authority any further, the action of the respondents authority concerned in not releasing the gold in question is very harsh, arbitrary and illegal and accordingly this writ petition being WPA 3211 of 2020 is disposed of by directing the respondent authority concerned to release the gold in question and allow the petitioner to re-export the same as per the order of the Revisional Authority dated 10th October, 2019, within a period of 30 days from the date of communication of this order.

(Md. Nizamuddin, J.)