



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

F.No. 373/110/B/13-RA/1012 Date of Issue 01.02.2018

ORDER NO. 07/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 31.01.2018 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 M. R. Mohamed.

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus No. 1268/2013 dated 17.09.2013 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri. M. R. Mohamed (herein referred to as Applicant) against the order no 1268/2013 dated 17.09.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case is that the applicant, a Sri Lankan national, had arrived at the Chennai Airport on 16.11.2012. On arrival he had brought one gold chain (24 carats) weighing 131 grams valued at Rs. 4,17,038/-. As the applicant was a frequent traveler and not eligible passenger to bring gold on concessional rate of duty, and as a proper declaration with regard to import of gold was also not made by him. The Assistant Commissioner of Customs, Airport vide Order-In-Original No. 812/2012 dated 16.11.2012 ordered for absolute confiscation of the impugned goods under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 40,000/- under Section 112 (a) of the Customs Act.

3. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus No. 1268/2013 dated 17.09.2013 rejected the appeal of the applicant.

4. The applicant has filed this revision application on the following grounds;

4.1. That the order of the appellate authority is against law, weight of evidence and circumstances and probabilities of the case.

4.2. That the adjudicating authority in his order has stated that the applicant is not an eligible passenger to bring silver/gold as part of passenger baggage as he is a Sri Lankan citizen. That the Notification no. 03/2012 is for availing concession rate of duty alone not for bringing silver/gold authority wrongly understood that the notification is for bringing silver/gold.

4.3 The Applicant did not admittedly pass through the green channel. He was at the red channel all along at the arrival hall of Airport and was under the control of officers.



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4.4. That the applicant had brought only one gold chain and the same is not commercial or trade and he told the officers that he had worn the gold chain for long period and the same is 22 carat and he also asked the officer permit him take back the gold chain while leaving India but the officer of Customs did not hear his and recorded the statement as if the passenger has brought the gold chain for monetary consideration. That the officer of Customs without hearing has recorded the personal hearing note that he brought it for monetary consideration and the personal hearing note was not read over and explained to him in Tamil and he does not know what has been written in the adjudication order.

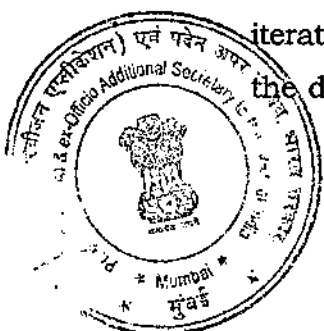
4.5. That in similar case the adjudicating authority ordered for re-export of the gold under Section 80 of the Customs Act but in the present case he passed an order for absolute confiscation of the gold. Thus it is clear that the adjudicating authority had passed an inconsistent order and it also shows disparity and discrimination while passing the orders.

4.6. That the seized goods are not prohibited one and hence the Section 111(d) of the Customs Act, 1962 is not attracted.

4.7. That CBEC's circular no. 9/2001-Cos dated 22.02.2011 states that in the event the passenger has not filled in the baggage declaration form, it is the responsibility of the officer at the Airport to verify the details and ensure that the baggage declarations filled up in full.

4.8. The Revision Applicant have cited various assorted judgments in support of their case, praying that the order of the Appellate Authority be set aside or any such order as deemed fit.

5. A personal hearing in the case was held on 04.12.2017, the Advocate for the respondent Shri Palanikumar requested for an adjournment due to a medical emergency. The personal hearing was rescheduled on 29.01.2018, which was attended by the Shri Palanikumar. The Advocate, reiterated the submissions filed in the reply to the Show Cause Notice and cited the decisions of GOI/Tribunals where option was given for re export of gold



was allowed and pleaded for upholding the Order in Appeal and that the Revision Application be dismissed. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. The Applicant is a foreign national and a frequent traveller to India. However every tourist has to comply with the laws prevailing in the country visited. If a tourist is caught circumventing the law, he must face the consequences. It is a fact that the same were not declared by the passenger as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the gold is justified.

7. However, the goods were not in commercial quantity and from the facts of the case it appears that the Applicant was wearing the gold chain when he was intercepted and it was not concealed in any manner. The facts of the case also state the Applicant was all along at the red channel, no attempts were made by the Applicant to evade the Customs authorities by trying to use the green channel. The Custom authorities have also not found any thing dutiable other than the gold chain, therefore it cannot be established that the presence of the Applicant at the red channel was for a reason other than declaration of the gold chain. CBEC Circular 09/2001 gives specific directions to the Customs officer as follows, "*In respect of 'Red Channel' passengers the general practice is to record the Oral declaration (OD) on the Disembarkation Card without first making the passenger fill up the relevant entries. It may be ensured that every passenger reporting at Red Channel fill up a Disembarkation Card clearly mentioning therein the quantity and value of goods that he has brought, and hand over the Customs portion of the card to the officer on duty at the red Channel. In case the same is incomplete/not filled up, the proper Customs officer should help record the O.D of the passenger 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.



8. Further, The gold chain worn by the Applicant also appears to be personal jewelry and not for sale or brought for third person for monetary consideration. The Applicant also does not appear to be acting as a carrier and it is not a case of concealment of gold, ownership of the gold is also not disputed. The reason for frequent visits has also not been explored to ascertain the actual reasons for frequent visits. The Applicant also states that he has worn the gold chain for a long time, this aspect has also not been explored by the custom authorities. Considering all factors, the Government is of the opinion that the absolute confiscation of the impugned goods is harsh and not justified. It is a fact that the Applicant was available at the red channel, however as a proper declaration was not made by him. The Government, therefore holds that there was a contravention of the Customs Act, 1962 warranting confiscation of the gold. But, while imposing redemption fine and penalty the applicant deserves to be treated with a lenient view because the applicant is a foreigner. As the applicant has requested for allowing export of the confiscated gold for re-export on payment of redemption fine, Government is inclined to accept the request. In view of the above mentioned observations, the Government also finds that a lenient view can be taken while imposing redemption fine and penalty upon the applicant. 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 impugned Order in Appeal therefore needs to be set aside.

7. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold for re-export in lieu of fine. The confiscation of the gold totally weighing 131gms 137gms, valued at Rs. 4,17,038/-.(Rupees Four lacs, seventeen thousand and thirty eight) is ordered to be redeemed on redemption fine of Rs. 80,000/- (Rupees Eighty thousand) under section 125 of the Customs Act, 1962. Government also observes that facts of the case justify slight reduction in penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 40,000/- (Rupees Forty thousand) to Rs. 30,000/- (Rupees Thirty thousand) under section 112(a) of the Customs



8. The impugned Order in Appeal is modified as detailed above.

9. So, ordered.

Ashok Kumar Mehta
31.1.2018
(ASHOK KUMAR MEHTA)

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

ORDER No. 07/2018-CUS (SZ) /ASRA/MUMBAI DATED 31.01.2018

To,

Shri. M. R. Mohamed.
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai 600 001.

True Copy Attested

Sankarsan Munda
31/1/18
SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. The Commissioner of Customs (Appeals), Custom House, Rajaji Salai Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

