

REGISTERED
SPEED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANCE

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

F. No. 373/181/B/16-RA/2332

Date of Issue 10/12/2018

ORDER NO. 1005/2018-CUS (SZ) / ASRA / MUMBAI DATED
30.11.2018 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 Purushothaman.

Respondent : Commissioner of Customs, Trichy.

Subject : Revision Application filed, under Section 129DD
of the Customs Act, 1962 against the Order-
in-Appeal No. 124/2016-TRY (CUS) dated
21.06.2016 passed by the Commissioner of
Customs (Appeals), Trichy.



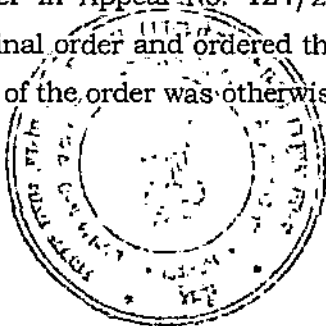
ORDER

This revision application has been filed by Shri Purushothaman (herein referred to as 'the Applicant') against the Order in Appeal No 124/2016-TRY (CUS) dated 21.06.2016 passed by the Commissioner of Customs (Appeals), Trichy Commissionerate.

2. Based on intelligence, the passenger, Shri Purushothaman was intercepted by the officers of Air Intelligence Unit at the Trichy Airport on his arrival by the Air Asia Flight No. AK-29 from Malaysia on 17.11.2014. The applicant had not declared any value in Customs Declaration Form. On enquiry as to whether he possessed any dutiable goods, the applicant replied in negative. During the personal search, the officers recovered two gold chains concealed in his pant pocket. The two gold chains recovered were totally weighing 399.400 gms. and valued at Rs. 10,64,401/- (Rupees Ten Lakh Sixty Four Thousand Four Hundred One Only). On enquiry, the applicant informed that the two gold chains were given to him by unknown person at Kuala Lumpur with instructions to hand them over to one of his person at Trichy . The applicant was promised to be paid a commission of Rs. 10,000/- for the same. The impugned gold chains were seized by the Customs Officers under reasonable belief that the applicant attempted to smuggle them in India without payment of appropriate Custom Duty.

3. The Original Adjudicating Authority vide Order-In-Original No. 126/2015 (JC) dated 04.12.2015 ordered absolute confiscation of two gold chains totally weighing 399.400 gms valued at Rs. 10,64,401/- under Section 111 (d), 111(i), 111(L) & 111(l) of the Customs Act, 1962. The Adjudicating Authority also imposed penalty of Rs. 3,50,000/- 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-2), Trichy. The appellate authority vide Order in Appeal No. 124/2016 TRY(CUS) dated 21.06.2016 modified the original order and ordered the reduction of penalty to Rs. 2,00,000/- Only. The rest of the order was otherwise upheld.



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

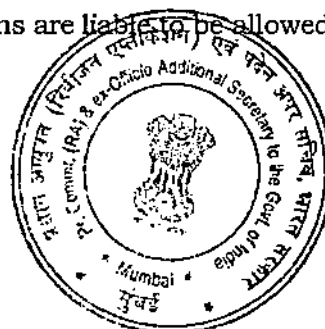
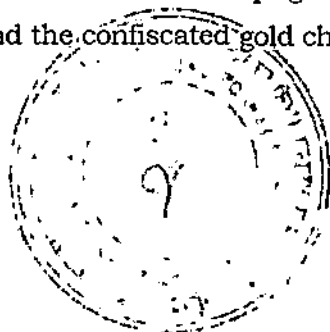
- 5.1 there was no concealment of gold chains.
- 5.2 the confiscated gold chains do not fall under the category of 'Prohibited Goods'.
- 5.3 the confiscated gold ought to have been allowed to be redeemed under Section 125 of the Customs Act, 1962.

6. Shri N. Manickam, Advocate on behalf of the applicant submitted vide his letter RA F. No. 373/181/B/16-RA dated 29.10.2018 that the applicant do not wish to be heard in person and requested to decide the case on merit.

7. The Government has gone through the facts of the case. The applicant was crossing the green channel; he was intercepted by the Customs Officers. The applicant had kept the column in Customs Declaration Form blank. On subsequent search of the applicant resulted in recovery of impugned two gold chains totally weighing 399.400 gms valued at Rs. 10,64,401/-. 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 to allow option to redeem the impugned gold chains and the Government is inclined to accept the plea. The order of absolute confiscation of two gold chains in the impugned Order in Appeal therefore needs to be modified and the confiscated gold chains are liable to be allowed to be redeemed



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 chains. The two gold chains totally weighing 399.400 gms valued at Rs. 10,64,401/- (Rupees Ten Lakh Sixty Four Thousand Four Hundred One Only) is ordered to be redeemed on payment of redemption fine of Rs. 4,00,000/- (Rupees Four Lakh 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. 2,00,000/- to Rs. 1,00,000/- (Rupees One Lakh Only).

11. Accordingly, the Order in Appeal stands modified to that extent. Revision is partly allowed on above terms.



(ASHOK KUMAR MEHTA)

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

ORDER No. 1005/2018-CUS (SZ) /ASRA/MUMBAI DATED 30.11.2018

To,

Shri

ATTESTED

1. Shri Purushothaman,
New No. 69, Old No. 14, 3rd Floor,
Kummalammaman Koli Street, Thondiarpeta,
Chennai - 600081.

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

Copy to:

1. The Commissioner of Customs, Trichy, No.1, Williams Road, Tiruchirappalli- 620 001.
2. The Commissioner of Customs (Appeals-2), No. 1, Williams Road, Cantonment, Tiruchirappalli- 620 001.
3. Shri N. Manickam, Advocate, 37, 8th Cross, Renga Nagar, K.K. Nagar, Post Tiruchirappalli- 620 021.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

