



GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre – I, Cuffe Parade,

Mumbai-400 005

F.No. 373/62/B/2015-RA

/23/66

Date of Issue 13/12/2018

ORDER NO. ¹⁰²⁸ /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 Pream Nazeer

Respondent : Commissioner of Customs (Airport) Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus No. 1677/2014 dated 11.09.2014 passed by the Commissioner of Customs (Appeals), Chennai.

ORDER

This revision application has been filed by Shri Pream Nazeer (herein referred to as Applicant) against the Order in Appeal C. Cus No. 1677/2014 dated 11.09.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. On 15.07.2013 the Applicant's arrived at the Chennai Airport, he was intercepted as he was walking out through the green channel. Examination of his baggage and person resulted in the recovery of 10 gold coins weighing 79.7 grams valued at Rs. 2,01,720/- (Rupees Two lakhs one thousand Seven hundred and twenty) and one silver coloured gold chain weighing 114.9 gms valued at Rs. 3,10,804/- (Rupees Three lakhs Ten thousand Eight hundred and four). In addition to the above the Applicant had brought four HTC phones valued at Rs. 68,000/- (Rupees Sixty eight thousand). The gold coins were recovered from his pant pockets and the gold chain was worn by the Applicant. Shri Pream Nazeer in his statement informed that the gold and the mobile phones were given to him by his younger brother Shri Nissar to be handed over to a friend in India.

3. After due process of the law vide Order-In-Original No. 244/03.04.2014 the Original Adjudicating Authority ordered absolute confiscation of the gold coins and the gold chain under Section 111 (d) (l) and (m) of the Customs Act, 1962. The four HTC phones were also held liable for confiscation but allowed redemption of the phones on payment of Rs. 15,000/- and imposed penalty of Rs. 50,000/- on the Applicant and a penalty of Rs. 60,000/- was also imposed on Shri Nissar 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 (Appeals) who vide Order-In-Appeal C. Cus No. 1677/2014 dated 11.09.2014 rejected the appeal of the Applicant .

5. Aggrieved with the above order the Applicant, has filed this revision application alongwith a condonation of delay Application pleading condonation of late filing of the Revision Application by 26 days interalia on the grounds that;

5.1 The order of the appellate authority is contrary to the law and probabilities of the case; The Applicant has not attempted to import any goods in contravention of the rules and regulations prevailing in India; Commissioner (Appeals) has erred in confiscating the gold coins and chain; applicant had not attempted to import any of the goods in contravention of any rules and regulations; It is not known on what basis the Customs authorities have

concluded that the above goods are sensitive; The applicant had not concealed the gold and it should be allowed for re-export; There is no violations of the provisions of the Customs Act and the Commissioner had arrived at a decision without application of mind; Irrelevant facts have been considered and relevant facts have been left out; The Commissioner has failed to act in a bonafide manner and therefore the order is tainted; The Applicant claims to have been working in Dubai for the last three years and during these years he has come only once in a year, therefore he is an eligible customer for concessional rate of duty; The entire goods were declared as required under section 77 of the Customs Act; The penalty of Rs. 1,00,000/- is arbitrary and unreasonable; The goods are not prohibited and it is mandatory for release on payment of fine as per section 125 of the Customs Act; The section 125 of the Customs Act, 1962 it is observed that in case of non-prohibited goods, held liable of confiscation shall be released on payment of fine the word shall makes it mandatory to impose fine in lieu of confiscation;

5.2 The Applicant submitted case laws in favor of his case and prayed for setting aside the Order in Appeal and allow the gold for re-export or pass further or other orders as deem fit and proper in the facts and circumstances of the case.

6. A personal hearing in the case was scheduled in the case, the Advocate for the respondent Shri A. K Jayaraj Advocate for the Revision Applicant attended the hearing, he re-iterated the submissions filed in Revision Application and pleaded for a lenient view in the matter and re-export of the gold and that the Revision Application be allowed as there was no ingenious concealment of the gold.

7. Government has gone through the facts of the case, In the interest of justice Government condones the delay of 26 days and the case is being decided on merits. The respondent had attempted to import the gold without declaration and therefore confiscation of the same is justified and upheld.

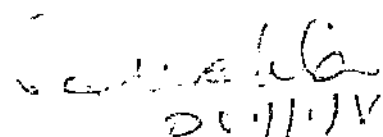
8. However, the facts of the case reveal that the gold coins were kept in his baggage and the gold chain was worn by the Applicant. The gold therefore cannot be considered as ingeniously concealed. Import of gold is restricted not prohibited. The ownership of the gold is not disputed. The Applicant has no past history of such misdemeanors. The 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. Further the Applicant in his application has submitted that he is eligible for importing gold on concessional rate, having stayed abroad for more than three years and visiting India only for short periods. In view of the above facts, the Government is of the opinion that absolute confiscation of the gold for non-declaration is harsh and unjustified and therefore, a lenient view can be taken in the matter. The Applicant has pleaded for redemption of the gold for re-export on payment of redemption fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal is therefore liable to be set aside.

10. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 194.6 gms valued at Rs. 5,12,524/- (Rupees Five lakhs Twelve thousand Five hundred and twenty four) is allowed to be redeemed for re-export on payment of redemption fine of Rs.1,50,000/- (Rupees One lakh Fifty thousand) under section 125 of the Customs Act, 1962. Government observes that the facts of the case justify reduction in the penalty imposed. The penalty of Rs. 50,000/- (Rupees Fifty thousand) is reduced to Rs. 30,000/- (Rupees thirty thousand) under section 112(a) of the Customs Act,1962 is appropriate..

11. The impugned Order in Appeal is modified as detailed above. Revision application is allowed on above terms.

12. So, ordered.


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

ORDER No. ¹⁰²⁸ /2018-CUS (SZ) /ASRA/MUMBAI

DATED 30.11.2018

To,

Shri Pream Nazeer
 c/o M/s A.K. Jayaraj, Advocate
 New No. 3, Old No. 2, 1st Floor,
 Thambusamy Road,
 Kilpauk, Chennai 600 010.

Copy to:

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