

ORDER

This revision application has been filed by Shri Thirumurugun Durairaj (herein referred to as Applicant) against the Order in Appeal No. 178/2016 dated 02.11.2016 passed by the Commissioner of Customs (Appeals), Cochin .

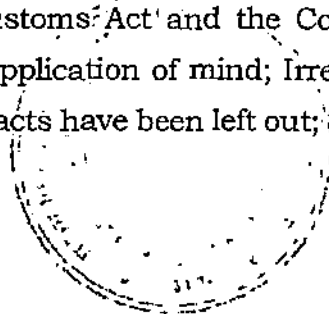
2. Briefly stated the facts of the case are that the applicant, arrived at the Cochin Airport on 20.10.2014. He was intercepted as he was trying to pass through the green channel and examination of his baggage resulted in the recovery of gold chains totally weighing 599.12 gms valued at Rs. 14,90,730/- (Rupees Fourteen lakhs Ninety nine thousand Seven Hundred and Thirty). The gold was recovered from the pockets of the trousers carried by the Applicant in his baggage.

3. After due process of the law vide Order-In-Original No. 105/2015-AIR dated 28.12.2015 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) and e, (l), (m) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 1,00,000/- under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) application who vide Order-In-Appeal No. 178/2016 dated 02.11.2016 rejected the appeal of the Applicant.

5. The applicant has filed this Revision Application interalia on the following grounds that

5.1 The order of the appellate authority is contrary to the law and probabilities of the case; The Commissioner (Appeals has erred in confiscating the four gold chains; The statement given by the Applicant was withdrawn the very next day; applicant had not attempted to import any of the goods in contravention of any rules and regulations; It is not known on what basis the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 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.

5. 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 the Revision Application be allowed.

6. The Government has gone through the facts of the case. A written declaration of gold was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the gold is justified.

7. However, the facts of the case do not allege that the impugned gold was ingeniously concealed. The impugned gold was recovered from the pockets of the pants carried by the Applicant in his baggage and this by no means can be construed as ingenious concealment. Import of gold is restricted not prohibited. The Applicant has no past history of such misdemeanors. The ownership of the gold is not disputed.

8. 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. 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

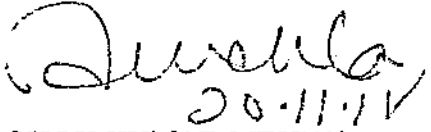


in the matter. The Applicant has pleaded for release of the gold for re-export and the Government is inclined to accept the plea. The impugned Order in Appeal is therefore liable to be set aside.

9. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 599.12 gms valued at Rs. 14,90,730/- (Rupees Fourteen lakhs Ninety nine thousand Seven Hundred and Thirty) is allowed to be redeemed for re-export on payment of redemption fine of Rs. 6,00,000/- (Rupees Six lakhs) 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. 1,00,000/- (Rupees One lakh) under section 112(a) of the Customs Act, 1962 is sufficient to meet the ends of justice and hence upheld. The impugned order in appeal is modified to this extent.

10. Revision application is allowed on above terms.

11. So, ordered.



(ASHOK KUMAR MEHTA)

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

ORDER No. ¹⁰³¹ /2018-CUS (SZ) /ASRA/MUMBAI

DATED 30.11.2018

To,

Shri Thirumurugun Durairaj
c/o M/s A.K. Jayaraj, Advocate
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ATTESTED

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

Copy to:

1. The Commissioner of Customs, Anna International Airport, Cochin.
2. The Commissioner of Customs & Central Excise (Appeals), Cochin.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

