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सत्यमेव जयते

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

F.No. 373/96/B/16-RA

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Date of Issue 19/12/2018

ORDER NO. ¹⁰⁷⁰ /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 S. Soundararajan

Respondent : Commissioner of Customs, Trichy.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal C. Cus
No. 65/2016 TRY (CUS) dated 04.04.2016 passed by the
Commissioner of Customs (Appeals), Trichy.



ORDER

This revision application has been filed by Shri S. Soundararajan (herein after referred to as the Applicant) against the order in appeal No. 65/2016 TRY (CUS) dated 04.04.2016 passed by the Commissioner of Customs (Appeals), Trichy.

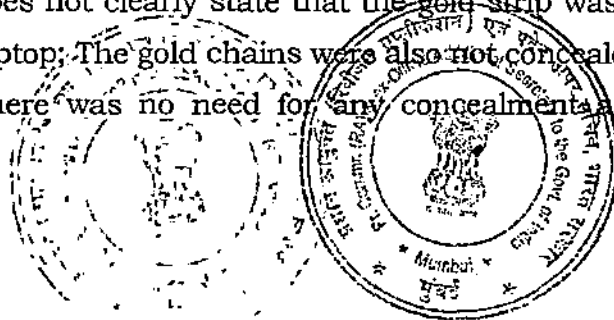
2. Briefly stated the facts of the case is that the applicant arrived at the Trichy International Airport on 13.02.2014. Examination of his baggage and person resulted in the recovery of two gold chains weighing 289.8 grams, Rs. 8,76,645/- (Rupees Eight Lakhs Seventy Six thousand Six hundred and Forty five) and one gold strip totally weighing 42.60 gms valued at Rs. 1,28,865/- (Rupees One Lakh Twenty eight thousand Eight hundred and Sixty five). The two gold chains were found pinned to the inside of his vest, and one gold strip was ingeniously concealed in the ventilator area of the laptop by the Applicant.

3. The Original Adjudicating Authority vide Order-In-Original No. 46/2015 dated 16.09.2015 ordered absolute confiscation of the gold strip under Section 111 (d), and (l) of the Customs Act, 1962. The gold chains were confiscated but allowed redemption on payment of Rs. 2,50,000/- . A penalty of Rs. 1,00,000/- was imposed under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 65/2016 TRY (CUS) dated 04.04.2016 rejected the appeal of the applicant.

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

5.1 The Commissioner (Appeals has failed to appreciate that the impugned was covered by Customs documents ie export certificates and detention receipts; The Commissioner (Appeals) also failed to appreciate that there is no space in the laptop to conceal the gold strip; This fact is physically verifiable; The report of the Assistant Commissioner AIU also does not clearly state that the gold strip was recovered from inside the laptop; The gold chains were also not concealed but fastened to the vest; There was no need for any concealments as the impugned gold was

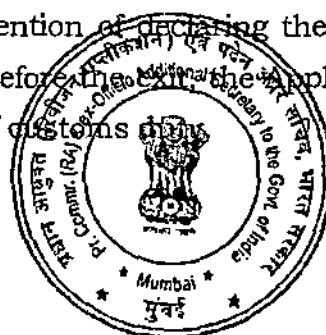


covered by export certificates; The order of the appellate authority has not discussed the reliability of the detention receipt; The Commissioner (Appeals) has also erred in concluding that the present goods are not in the same form and purity as per the certificate produced; There was no reason to declare the gold; The goods are restricted and not prohibited and it is mandatory for release on payment of fine as per section 125 of the Customs Act; The penalty imposed under section 112 (a) is not invokable.

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 Applicant Shri N. Manickam in his letter dated 29.10.2018 has stated that his applicants do not wish to be heard in person and in view of the same the Revision Application may be decided on merits.

7. The Government has gone through the case records it is observed that the gold chains were found pinned to the inside of his vest by the Applicant, and the gold strip was ingeniously concealed in the ventilator area of the old laptop brought by the Applicant. The concealment was planned, so as to avoid detection and evade Customs duty and smuggle the gold into India. The Applicant had not filed any declaration as required under Section 77 of the Customs Act, 1962 and was walking out through the green channel when he was intercepted. Further, the Appellate authority has rightly pointed out that the gold items under import are not the same as those covered under the export certificate produced by the Applicant. The export certificate was issued on 28.01.2014 and the Applicant has returned from this trip on 31.01.2014, and again proceeded abroad on 09.02.2014 and returned on 13.02.2014. This is not a simple case of mis-declaration. In this case the Applicant has blatantly tried to smuggle the gold into India in contravention of the provisions of the Customs, 1962. The Applicant had no intention of declaring the gold to the authorities and if he was not intercepted before the exit, the applicant would have taken out the gold without payment of customs duty.



8. The above acts have therefore rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold strip absolutely and released the two gold chains on redemption fine and penalty and applicable customs duty. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.

9. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order No. 65/2016 TRY (CUS) dated 04.04.2016 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

10. Revision Application is dismissed.

11. So ordered.

Ashok Kumar Mehta
20/11/18

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

ORDER No. ¹⁰⁷⁰ /2018-CUS (SZ) /ASRA/MUMBAI

DATED 30.11.2018

To,

Shri S. Soundararajan
Uyyakon Thirumalai,
Trichy - 620 102.

1. The Commissioner of Customs, (Airport), Trichy
2. The Commissioner of Customs (Appeals), Trichy.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

