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SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

F.No. 373/17/B/15-RA  
F.No. 380 /10/B/15-RA

2888

Date of Issue

28/05/21

ORDER NO. <sup>119-120</sup> /2021-CUS (WZ)/ASRA/MUMBAI DATED 30.04.2021 OF  
THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO  
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS  
ACT, 1962.

F.No. 373/17/B/15-RA

Applicant : Shri Mohammed Shahad Choy Choo.

Respondent: Pr. Commissioner of Customs(Airport), Mumbai

F.No. 380 /10/B/15-RA

Applicant : Pr. Commissioner of Customs(Airport), Mumbai

Respondent: Shri Mohammed Shahad Choy Choo.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. MUM-  
CUSTM-PAX-APP-645-14-15 dated 02.02.2015 passed by  
the Commissioner of Customs (Appeals), Mumbai, Zone-  
III.

ORDER

These revision applications has been filed by Shri Mohammed Shahad Choy Choo (herein after referred to as the Applicant) as well as by the Pr. Commissioner of Customs(Airport), Mumbai (herein after referred to as the Applicant department) against the Order in appeal. MUM-CUSTOM-PAX-APP-645-14-15 dated 02.02.2015 passed by the Commissioner of Customs (Appeals), Mumbai, Zone-III.

2. Briefly stated the facts of the case are that the officers of Customs intercepted the Applicant, who had arrived from Mauritius on 16.05.2014 and opted for the green channel. On examination he was found to be carrying gold jewelry weighing 374 grams Rs.9,64,936/- ( Rupees Nine Lakhs Sixty Four thousand Nine hundred and Thirty six) were recovered from the Applicant.

3. The Original Adjudicating Authority vide Order-In-Original No. JC/RR/ADJN/107/2014-15 dated 20.05.2014 ordered confiscation of the impugned gold jewelry but allowed its redemption on payment of Rs.3,50,000/- ( Rupees Three lakhs Fifty thousand) and imposed penalty of Rs. 1,00,000/- ( Rupees One lakh) under section 112 (a) of the Customs Act, 1962 on the Applicant. A penalty of Rs. 5,000/- was also imposed under section 114AA of the Customs Act, 1962 on Applicant.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal dated 02.02.2015, reduced the redemption fine to Rs. 3,00,000/- ( Rupees Three lakhs ) and also reduced the penalty imposed to Rs.50,000/-(Rupees Fifty thousand) and modified the Order-In-Original.

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

5.1 The applicant is a foreign national.

5.2 It is the first time that the Applicant has brought such type of goods. 5.3 The gold jewellery brought in by the Applicant was not for sale.

5.4 The gold jewellery brought in by the Applicant is his personal jewellery.

5.5 The goods brought in, are not in crude form, as mentioned in ITC.

5.6 The jewellery brought in is used one & was found on the person of the Applicant.

5.7 The Customs Dept. had valued the detained gold jewellery and the Applicant reported that the jewellery is of 18 Karats & 21 Karats as stated by the Applicant during the Personal hearing before the Ld. Adjudicating authority who ordered for revaluation of the same and found the same to be correct as stated by the Applicant during personal hearing. The Applicant had also produced the copies of invoice showing the purchase date of the year 1997 which proves that the jewellery is old and used one. But the same point was not considered by the Ld. Adjudicating authority.

5.8 The Customs Department valued the Gold jewellery weighing 373.7 grams at Rs.8,37,324/- as Local. Market Value (LMV) & Rs.9,64,936/- (CIF value).

5.9 The Ld. Adjudicating authority should have appreciated that the question of smuggling is ruled out in this case as Market value of the goods is less than the CIF value and no one would like to import Gold to sustain loss.

5.10 The Applicant is well aware about a judgment of the Kerala High Court (in case of one Mr.Vigneshwaran Sethuraman) which states that now a Foreign National can wear the Gold in India (copy enclosed).

5.11 The Applicant craves to add, alter or amend any of the grounds mentioned above and produce any document/judgment before or during the Persona Hearing.

The Applicant, therefore, humbly prays that under:- The re-export of the jewelry may kindly be allowed under section 80 of the Customs Act, 1962 considering

the same is personal jewelry and was not meant for sale and the Applicant is a foreign national. Personal penalty may kindly be set aside or reduced substantially. Or pass any other order as deem fit under the above facts and circumstances of the case.

6. The Applicant department is also aggrieved by the impugned Order in Appeal have filed a revision application on the grounds that;

6.1 The above Order-in Appeal does not appear to be legal and proper as the Commissioner (Appeals), has failed to address the appeal filed by the department and has disposed off the appeal filed by the passenger without giving due consideration to the said Departmental appeal and the grounds therein. Thus, the departmental Appeal lies un-disposed before the Commissioner (Appeals). The subject Order-in-Appeal therefore appears to be ultra virus in the eyes of law.

6.2. The hon'ble CESTAT in the case of Commissioner of Customs (prev) Kolkata Ws Arun Kumar Dhar [2009(238)ELT321(Tri-Kolkata)] has ruled that appeals pertaining to the same impugned order is not to be taken up separately and that it was incumbent upon the lower Appellate authority to hear both appeals together and passed one order against the same original order which was the subject matter of both appeals before him

6.3 In the instant case the passenger, from whose possession gold jewellery in crude form weighing 374 gms v/a Rs. 9,64,936/- was seized, was of foreign origin. The Adjudicating Authority vide Order-in-Original had ordered the confiscation of the impugned gold under section 111(c), (1) & (in) of the Customs Act while allowing the redemption of the same on payment of line of Rs.3,50,000/- and imposed penalties of Rs.1,00,000/- u/s 112(a) and of Rs. 5000/- u/s 114AA on the importer. The Department had filed an appeal before the Commissioner (Appeals) against the said Order-in-Original, vide Appeal No.634 dated 17.11.14 citing the judgment of the Hon'ble High Court of Madras in case of Aiyakannu v/s. Commissioner of Customs (AIR),Chennai-I reported as 2009(247) ELT 21 (Mad.) where-in the hon'ble High Court has declined

to release the gold imported illegally by Foreign National. In this case High Court observed that Foreign National is not entitled to import gold in terms of Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993 which applied only to passenger of Indian Origin or a passenger holding a valid passport issued under Passport Act, 1967 - Redemption Fine was not permissible and impugned gold was liable to absolute confiscation as there was attempt to smuggle by green channel. However, sufficient opportunity to be heard in respect of the said appeal filed by the revenue was not granted to it before passing the subject Order-in-Appeal. Therefore the order of the Commissioner (Appeal) appears to be ab initio bad, in view of the Madras High Court judgment.

6.4 The Commissioner (Appeals), in her order, has taken cognizance of the passenger's failure to establish that the impugned jewellery was for his bonafide use. In view of the foregoing observation coupled with the fact that the passenger being a foreign national is not entitled for import of gold, the gold ought to have been confiscated absolutely.

6. In view of the above, personal hearing in the case was held on 12.03.2021. Shri N. J. Heera, Advocate attended the said hearing online on behalf of the Applicant and reiterated the submissions already made. He requested that passenger being a foreign national re-export be allowed. He also requested to reduce the redemption fine and penalty as it is genuine jewelry of a foreign national. Nobody attended the hearing on behalf of the Applicant department.

7. The Government has gone through the facts of the case, the Original adjudicating authority has allowed redemption of the gold justifying the same by applying the ratio of various judgements which have justified release of the gold on payment of redemption fine. The Appellate authority has further reduced the redemption fine and penalty but has denied re-export. Government observes that the Applicant is a foreign national, however every tourist has to comply with the laws prevailing in the country visited. It is a fact that the gold was not declared by the passenger as required under Section 77 of the Customs Act, 1962, hence the confiscation of the gold jewelry is justified. However absolute confiscation as pleaded by the Applicant department would be an

order in excess. In the case of Vigneswaran vs UOI in W.P. 6281 of 2014 (I) dated 12.03.2014, the Hon'ble High Court has observed that only because of not declaring the gold, the absolute confiscation is bad under law. Case of Aiyakannu vs. Commissioner of Customs dealt with illegal import of gold and not of used jewellery. Therefore, facts are clearly distinguishable.

8. The Applicant is a foreign national, He was intercepted as he opted for the Green Channel. A search of his person resulted in the recovery of gold jewelry weighing 374 grams Rs.9,64,936/- (Rupees Nine Lakhs Sixty Four thousand Nine hundred and Thirty six). The Applicant has claimed that he was wearing the gold jewelry which has not been refuted by the lower authorities, and there is no findings that the gold jewelry was ingeniously concealed. The gold jewelry is not of 24 carat purity as ascertained by the Adjudicating authority. The Applicant states that he had produced purchase receipts evidencing that the gold is old and used, under the circumstances, it would not be appropriate to conclude that the impugned jewelry is not for bonafide use and brought for sale. There are no allegations that the Applicant is a habitual offender and was involved in similar offences earlier. Being a foreign citizen the release of the personal gold on redemption fine without allowing re-export would not allow him to take back the gold and is therefore not justified.

9. In the case of Vigneshwaran Sethuraman Vs UOI, reported in 2014 (308) ELT 394 (Ker) the Hon'ble High Court has observed that *".....When gold ornament (a chain) was worn by petitioner and not carried in baggage, it was not required to be declared as body of a passenger cannot, be said to be baggage - Going by the stipulations in Sections 77, 80 and 81 of the Act, I am persuaded to take the view that the provisions therein can have no application in the instant case, where the petitioner, a tourist coming from Sri Lanka had on his person a gold chain which he was wearing and not kept concealed. .... there being no prohibition to the effect that a foreign tourist arriving in India cannot wear gold ornament on its person or wear gold ornaments of 24 carat purity..... Even the Baggage Rules, 1998 do not prohibit a foreign tourist entering India from wearing a gold chain or other gold jewellery"*. In view of the above, the impugned Appellate order therefore is liable to be modified.

10. The impugned gold is allowed for re-export. Government however observes that once penalty has been imposed under section 112 there is no necessity of imposing penalty under section 114AA, the penalty of Rs. 5,000/- ( Rupees Five thousand) imposed under section 114AA of the Customs Act, 1962 therefore is set aside.

11. Revision application is disposed of accordingly.

*Shrawan*  
*30/4/21*  
( SHRAWAN KUMAR )

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

119-120  
ORDER No. /2021-CUS (SZ) /ASRA/

DATED 30.04.2021

To,

1. Shri. Mohammed Shahad Choy Choo, C/o A. M. Sachwani, Advocate, High Court, Nulwala bldg., 41, Mint Road, Opp. GPO, Fort, Mumbai-400 001.

Copy to:

2. The Pr. Commissioner of Customs (Airport), CSI Airport, Mumbai.
3. Shri. A. M. Sachwani, Advocate, High Court, Nulwala bldg., 41, Mint Road, Opp. GPO, Fort, Mumbai-400 001.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File. ,
6. ✓ Spare Copy.