

373/240/B/14-RA

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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/240/B/14-RA

Date of Issue 03-04-2018

ORDER NO. 119/2018-CUS(SZ)/ASRA/MUMBAI DATED 20.03.2018

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. Ahamed Mohideen Samsu Nishar

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. 665/2014 dated
10.04.2014 passed by the Commissioner of Customs (Appeals)
Chennai.



ORDER

This revision application has been filed by Shri Ahamed Mohideen Samsu Nishar against the order no C.Cus No. 665/2014 dated 10.04.2014 passed by the Commissioner of Customs (Appeals), Chennai.

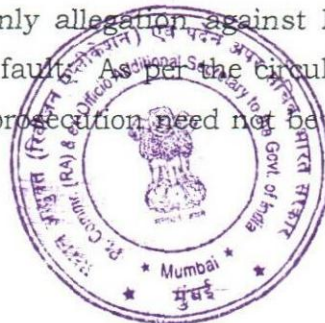
2. Briefly stated facts of the case are that the applicant, a Sri Lankan national had arrived at the Chennai International Airport on 12.09.2012 and was intercepted while attempting to go through the green Channel without declaration. Examination of his person resulted in recovery of one gold chain(with two dollars)(old and used)weighing 124 gms and valued at Rs. 3,74,728/-, one white kada weighing 94 gms valued at Rs. 3,03,808/- and one white ring worn by him weighing 19 gms valued at Rs. 61,408/-. The gold jewelry totally weighing 237 gms valued at 7,39,944/- (Seven Lacs thirty nine thousand nine hundred and forty four). As the Applicant had not declared the impugned gold the original Adjudicating Authority vide his order 717 dated 18.10.2013 absolutely confiscated the gold bangle and gold ring. The gold chain (his mother's Thalli) was confiscated and allowed to be redeemed for re-export on payment of a fine of Rs. 1,80,000/-. A Penalty of Rs. 30,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant.

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals) Chennai, vide his Order in Appeal C.Cus No. 665/2014 dated 10.04.2014 rejected the Appeal.

4. Being aggrieved by the impugned order of the Commissioner of Customs (Appeals), Chennai, The Applicant have filed these Revision Application interalia on the grounds that:

4.1 Order of the respondent is against law, weight of evidence and circumstances and probabilities of the case; That the gold jewelry was worn by the Applicants and it was not concealed, the same was visible and therefore the question of declaration does not arise,; He was not aware that it was an offence to bring gold jewelry, the gold belonged to him and it was purchased from his own earnings; He was all along under the control of the Customs officers at the red channel and had not crossed the green channel; one gold chain, bangle, and ring cannot be considered as commercial or for trade; Being a foreigner he was not aware of Indian law and therefore cannot be expected to make a proper declaration.

4.2 The Applicant also pleaded that the only allegation against him is that he did not declare the gold and it was only a technical fault. As per the Circular 394/71/97-CUS (AS) GOI dated 22.06.1999 states that arrest and prosecution need not be considered in routine in



respect of foreign nationals and NRIs who have inadvertently not declared; The Hon'ble Supreme Court has in the case of Om Prakash vs Union of India stated that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions;

3.3 The Revision Applicant cited various assorted judgments in support of re-export and in support of his case and prayed for permission to re-export the gold bangle and ring and reduce the redemption fine and personal penalty imposed.

5. A personal hearing in the case was held on 07.03.2018, the Advocate for the respondent Shri Palanikumar attended the hearing he re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. The Applicant is a foreign national. However every tourist has to comply with the laws prevailing in the country visited. If a tourist is caught circumventing the law, he must face the consequences. It is a fact that the same were not declared by the passenger as required under Section 77 of the Customs Act, 1962 and had they not been intercepted he would have gone without paying the requisite duty, under the circumstances confiscation of the gold chain is justified.

7. However, the facts of the case state that the Applicants were intercepted before they exited the Green Channel. The gold was worn by the Applicant, hence, there was no ingenious concealment of the goods. The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record to the oral declaration on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant more so because he is a foreigner. 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 more so because they are both foreigners. The absolute confiscation of the gold is therefore harsh and unjustified. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The order of absolute confiscation of the gold bangle and gold ring therefore needs to be modified and the entire gold jewelry is liable to be allowed for re-export on payment of redemption fine and penalty.



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8. Taking into consideration the foregoing discussion, Apart from the gold chain, Government also allows redemption of the absolutely confiscated gold bangle and gold ring totally weighing 113 gms valued at Rs. 3,65,216/- for re-export in lieu of fine. The gold jewelry is ordered to be redeemed for re-export on payment of redemption fine of Rs1,20,000/- (Rupees One lac twenty thousand) under section 125 of the Customs Act, 1962. The Government also observes that the facts of the case justify reduction of redemption fine for re-export on the gold chain thalli weighing 124 gms valued at Rs. 3,74,728/- (Rs. Three lacs seventy four thousand Seven hundred and twenty eight) from Rs. 1,80,000/- (one lac eighty thousand) to Rs. 1,25,000/- (Rupees One lac twenty five thousand). The penalty of Rs. 30,000/- (Rupees Thirty thousand) imposed on the Applicant is appropriate, Government is not inclined to interfere with the same.

9. The impugned order stands modified to that extent. Revision application is partly allowed on above terms.

11. So, ordered.

(Signature)

20/3/18

(ASHOK KUMAR MEHTA)

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

ORDER No. 119/2018-CUS (SZ)/ASRA/MUMBAI

DATED 20.03.2018

To,

Shri Ahamed Mohideen Samsu Nishar
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai 600 001.

True Copy Attested

(Signature) 20/3/18
SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

Copy to:

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

