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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. 371/44/B/2015-RA / 288

Date of Issue 29.01.2021

ORDER NO. 12 /2021-CUS (WZ)/ASRA/MUMBAI DATED 18.01.2021 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.

Applicant : Shri Fawzal Jhzan Athembawa

Respondent : Commissioner of Customs, CSI Mumbai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-83/15-16 dated 09.06.2015 passed by the Commissioner of Customs (Appeals), Mumbai- Zone-III.



ORDER

This revision application has been filed by Shri Fawzal Jhzan Athembawa (herein referred to as Applicant) against the Order in Appeal No. MUM-CUSTOM-PAX-APP-83/15-16 dated 09.06.2015 passed by the Commissioner of Customs (Appeals), Mumbai- Zone-III.

2. The Officers of Customs intercepted the Applicant, a Sri Lankan national at the CSI Airport, Mumbai on 18.11.2014 after he had cleared himself through the green channel. Examination of his person resulted in the recovery of one gold kada and one gold chain worn by him totally weighing 225gms valued at Rs. 5,26,500/- ( Rupees Five lakhs Twenty six thousand five hundred ).

3. The Original Adjudicating Authority vide its Order-In-Original No. Air Cus/49/T-2/9319/2014 dated 18.11.2014 relying on the decision Aiyakannu Vs Jt. Commr. Of Customs, Reported in 2012 (281) E.L.T. 223 (Mad.), ordered absolute confiscation of the gold and imposed penalty of Rs. 50,000/- (Rupees Fifty thousand ) on the Applicant.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals). The Commissioner (Appeals) vide his order No. MUM-CUSTOM-PAX-APP-83/15-16 dated 09.06.2015 upheld the order of the adjudicating authority and rejected the Appeal relying on the decision of the Apex Court in the case of Commr. Of Customs Vs Samynathan Murugesan reported at 2010 (254) ELT A15 (S.C.).

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

5.1 The gold jewelry imported by the petitioner was absolutely confiscated under Section 111 of the Customs Act inasmuch as it was attempted to be cleared without declaration.

5.2 Whenever confiscation of any goods, the importation or exportation whereof is prohibited under this Act or otherwise, give to the owner of the goods, an option under Section 125 of the Customs Act, 1962 to pay in lieu of confiscation such fine as the said officer thinks fit.

5.2 From the aforesaid it is apparent that Section 125 provides for confiscation of improperly imported goods. Section 111 provides that goods brought from the place outside India are liable to confiscation if the goods are improperly imported as provided therein. In cases where goods are liable to



confiscation, discretion is given to the authority to impose penalty. Further, section 125 empowers confiscation of such goods. The Section further empowers the authority to give an option to the owner or the person from whom goods were seized to pay fine in lieu of such confiscation for return of the goods.

5.3 Since, the petitioner is the importer of the gold article, as per Clause 26 of Section 2 of the Customs Act, the Adjudicating Authority ought to have released the gold to the petitioner, on his paying the proper customs duty and penalty, as per the provisions of the Customs Act, 1962.

5.4 However, contrary to the provisions of the said Act and without having sufficient reasons to do so and showing nothing that the petitioner who is a PIO is not entitled to get the goods released, on his payment of the customs duty and the penalty liable to be paid by him.

5.5 It is submitted by the petitioner that he is entitled to an opportunity for redeeming the gold. This opportunity was denied to him by the Additional Commissioner who ordered absolute confiscation of the gold bars. There is no provision in the Customs Act which made it mandatory for the Additional Commissioner to order absolute confiscation of the gold bars in the circumstances found by him.

5.6 In the case of V. P. Hameed Vs Collector of Customs, Bombay (1994 (7) ELT 425) the order of absolute confiscation was set aside and the petitioner was allowed to redeem the goods under section 125 against payment of fine. Tribunals have held to this effect in the case of K. Kuttiyandi v. Commissioner of Customs, Chennai (Appeal No. C/29/2000), CFS/FAT Bench set aside the Commissioner's order of absolute confiscation of gold biscuits and he was directed to determine a fine to be paid by the party for redeeming the goods under Section 125.

5.7 The law on absolute confiscation vis-a-vis option to redeem the same stands discussed in detail by the Tribunal in the case of Gauri Enterprises vs Commissioner of Customs, Pune [2002 (145) ELT 705 (Tri Bang)]. It was observed in the judgment that resort to absolute confiscation should be an exception and not the rule. • The petitioner should be given an option to redeem the goods on payment of fine. The matter be remanded to the Commissioner for fixing the quantum of redemption fine.

5.8 From the decisions cited supra, relied on by the petitioner, it is clear that an option has to be given to the petitioner to pay the applicable customs duty and the redemption fine and to get the goods released, as per Section 125 of the Customs Act, 1962.

5.9 The case laws relied upon by the learned Additional Commissioner of Customs do not have relevance with the case of the petitioner.



5.10 Taking the overall facts and circumstance of the case into consideration, further proceedings may be dropped and the gold article may be ordered to be released immediately to the petitioner for re-export.

6. A personal hearing in the case were scheduled on 12.12.2020, Shri Prakash Shingrani, Advocate appeared on behalf of the Applicant and reiterated the submissions and requested for allowing re-export of the jewelry belonging to a foreign national.

#### FINDINGS AND ORDER

7. Government notes that the Applicant is a Sri Lankan citizen, there was no concealment of the goods, the gold chain and kada was worn by the Applicant. The only reason that the adjudicating authority has confiscated the gold absolutely, is because the applicant is a foreign citizen and is not entitled to import gold. A foreigner, might not know Indian laws and therefore mere non-submission of the declaration cannot be the ground for absolute confiscation of gold jewelry.

8. Government also notes that the case of Commr. Of Customs Vs Samynathan Murugesan reported at 2010 (254) ELT A15 (S.C.) referred to in the order of the Appellate Authority is not applicable as in the stated case gold ornaments seized were recovered from a TV set. The case law referred to by the adjudicating authority ie Aiyakannu Vs Jt. Commr. Of Customs, reported in 2012 (281) E.L.T. 223 (Mad.) also stands distinguished because in said case the foreign passport holder brought gold, concealing it inside bag covered with coloured adhesive tapes and not declaring it to Customs on arrival.

9. In the present case the gold chain and the gold kada was worn by the Applicant. Here, the Government places its reliance in an identical case of Vigneshwaran Sethuraman Vs UOI. reported in 2014 (308) ELT 394 (Ker) 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 - Further, considering the stipulations in Sections 77, 80 and 81 of Customs Act, 1962 held that same have no application When foreign tourist had on its body a gold chain which was worn and not concealed - Furthermore, 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.....At most, duty payable could have been levied....."* *Even the Baggage Rules, 1998 do not prohibit a foreign tourist entering India from wearing a gold chain or other gold jewellery".*



10. However, gold jewelry was in excess of what is permissible for a resident or a foreign national, therefore the same was required to be declared so as to account for its import and subsequent export, if any. Non-declaration of the gold jewelry and attempt to escape from the law without payment of duty or appropriate accountal of the gold jewelry makes it liable to confiscation.

11. Taking into consideration the foregoing discussion, Government, finds that facts of the case do not warrant absolute confiscation of the gold jewelry of an Sri Lankan citizen. The absolute confiscation is therefore set aside. However the gold jewelry merited confiscation. The impugned gold jewelry valued at Rs. 5,26,500/- ( Rupees Five lakhs Twenty six thousand five hundred ) is allowed to be redeemed for re-export on payment of redemption fine of Rs.1,25,000/- (Rupees One lac Twenty five thousand). Government observes that the facts of the case justify reduction of penalty, the penalty of Rs. 50,000/- ( Rupees Fifty thousand ) imposed is also reduced to Rs.30,000/- ( Rupees Thirty thousand ).

12. Revision application is allowed on above terms.

*Shrawan*  
18/01/2021  
( SHRAWAN KUMAR )  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. 12/2021-CUS (WZ) /ASRA/

DATED 18.01.2021

To,

Shri Fawzal Jhzan Athembawa, C/o Shri P. K. Shingrani- Advocate, 12/334, New MIG Colony, Bandra (E) , Mumbai - 51.

Copy to:

1. The Commissioner of Customs, CSI Airport, Mumbai.
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