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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
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Mumbai-400 005

F.No. 373/367/B/14-RA

Date of Issue 03.04.2018

F. No. 373/368/B/14-RA

ORDER NO. <sup>120-121</sup> /2018-CUS(SZ)/ASRA/MUMBAI DATED 21.03.2018

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. Sanmuga Thevar Krishna Menan and  
Shri Gangoda Gama Arachchige Krishantha Jayawardana.

Respondent :Commissioner of Customs, Bangalore.

Subject :Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 297 & 298/2014 dated 12.09.2014 passed by the Commissioner of Customs (Appeals), Bangalore.



Order

These Revision applications have been filed by Sanmuga Thevar Krishna Menan and Shri Gangoda Gama Arachchige Krishantha Jayawardana against the order no C.Cus No. 297 & 298/2014 dated 12.09.2014 passed by the Commissioner of Customs (Appeals), Bangalore.

2. Since a common issue is involved in both these Revision Applications and as they have been addressed by the same order in original and the same Order in Appeal and are being represented by the same advocate Shri Palanikumar, these Revision Applications are being disposed by a common order.

3. The officers of the Air Intelligence Unit on prior information intercepted Shri. Sanmuga Thevar Krishna Menan and Shri Gangoda Gama Arachchige Krishantha Jayawardana, both Sri Lankan nationals (hereinafter referred to as the applicants) while they were exiting the green channel of the Customs area of Bangalore International Airport. When questioned they informed the said officers that they were not carrying any valuable goods. Personal search of Shri. Sanmuga Thevar Krishna Menan resulted in the recovery of one gold chain and one gold bracelet and one gold ring totally weighing 329.90 gms of gold jewellery valued at Rs.9,67,596/-(Nine lacs Sixty seven thousand Five hundred and ninty six). Personal search of Shri Gangoda Gama Arachchige Krishantha Jayawardana also resulted in seizure of one gold chain and one gold bracelet and one gold ring totally weighing 327.70 gms valued at Rs. 9,61,144/-. (Nine lacs Sixty one thousand one hundred and forty four ). Both the Applicants were arrested and subsequently released on bail.

4. The Original Adjudicating Authority vide order dated 93/2013 dated 18.10.2013 absolutely confiscated the gold jewelry of both the Applicants and imposed a penalty of Rs. 1,00,000/- ( Rupees one lac )each, on both the Applicants. Aggrieved by the impugned order of the Original Adjudicating Authority, the applicants filed an Appeal before the Commissioner of Customs (Appeals), Bangalore. The Commissioner of Customs (Appeals), Bangalore finding no merit in their Appeal vide Order in Appeal No. 297 & 298/2014 dated 12.09.2014 rejected the Appeals.

5. Being aggrieved by the impugned order of the Commissioner of Customs (Appeals), Bangalore, The Applicants have filed these Revision Applications *inter alia* on the grounds that;

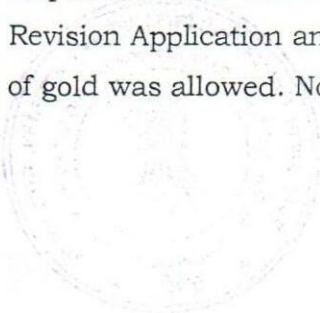


5.1 Order of the respondent is against law, weight of evidence and circumstances and probabilities of the case; That the gold jewelry was worn by the Applicants and it was not concealed, the same was visible and therefore the question of declaration does not arise, the facts can also be ascertained through the CCTV video record; They were not aware that it was an offence to bring gold jewelry, the gold belonged to him and it was purchased from his own earnings; They were all along under the control of the Customs officers at the red channel and had not crossed the green channel As the Applicants were foreign citizens the eligibility notification would not be applicable to them; that section 111 d, l m, and o are not attracted in the case;

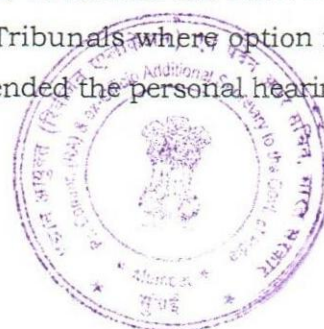
5.2 It was also pleaded that CBEC circular 9/2001 gives specific directions stating that a declaration should not be left blank, if not filled in the Officer should help the passenger to fill in the declaration card, such an exercise was not conducted by the officers; As per the circular 394/71/97-CUS (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 states that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions; under section 125(2) of the Customs Act, 1962 option of redemption is mandatory and has to be exercised. The absolute confiscation of the gold is therefore harsh and unjustified, and the worn gold jewelry should have been allowed for re-export without redemption fine and penalty. But the officers proceeded to detain the jewelry because it was not declared; the gold was not concealed in an ingenious manner.

5.3 The Revision Applicant cited various assorted judgments and boards policies in support of re-export and in support of his case and prayed for permission to re-export the gold on payment of nominal redemption fine and reduced personal penalty.

6. 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.



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7. The Government has gone through the facts of the case. The Applicants are both foreign nationals. 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 is justified.

8. However, the facts of the case state that the Applicants were intercepted before they exited the Green Channel. The gold was worn by both the Applicants, 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. 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 jewelry in the impugned Order in Appeal therefore needs to be modified and the confiscated gold jewelry is liable to be allowed for re-export on payment of redemption fine and penalty.

9. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold jewelry for re-export in lieu of fine. The gold jewelry totally weighing 329.90 gms of gold jewellery valued at Rs.9,67,596/- (Nine lacs Sixty seven thousand Five hundred and ninety six) brought by Shri. Sanmuga Thevar Krishna Menan is ordered to be redeemed for re-export on payment of redemption fine of Rs.3,50,000/- (Rupees Three lacs Fifty thousand) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify slight reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 1,00,000/- (Rupees One lac ) to Rs 75,000/- ( Rupees Seventy Five thousand ) under section 112(a) of the Customs Act, 1962.



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10. Government also allows redemption of the confiscated gold jewelry brought by Shri Gangoda Gama Arachchige Krishantha Jayawardana for re-export in lieu of fine. The gold jewelry totally weighing 327.70 gms valued at Rs. 9,61,144/-. (Nine lacs Sixty one thousand one hundred and forty four. ) is ordered to be redeemed for re-export on payment of redemption fine of Rs.3,50,000/-(RupeesThree lacs Fifty thousand) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify slight reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 1,00,000/- (Rupees One lac ) to Rs 75,000/- ( Rupees Seventy Five thousand ) under section 112(a) of the Customs Act,1962.

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

12. So, ordered.

*Ashok Kumar Mehta*  
24.3.2018

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

ORDER No. <sup>120-13)</sup> /2018-CUS (SZ)/ASRA/ MUMBAI

DATED 21.01.2018

To,

Shri. Sanmuga Thevar Krishna Menan  
Shri Gangoda Gama Arachchige Krishantha Jayawardana.  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High court, 2<sup>nd</sup> Floor,  
Chennai 600 001.

**True Copy Attested**

*Sankarsan Munda*  
22/1/18

**SANKARSAN MUNDA**  
Asstt. Commissioner of Custom & C. Ex.

Copy to:

1. The Commissioner of Customs, Bengaluru I. Airport, Bengaluru.
2. The Commissioner of Customs (Appeals), C. R. Building, Queens Road, Bengaluru, 560 001.
3. Sr. P.S. to AS (RA), Mumbai.
4. ✓ Guard File.
5. Spare Copy.

