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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. 373/20/B/14-RA

Date of Issue 04.04.2018

ORDER NO. 123/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 22.03.2018 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 Tharmalingam Sundramoorthy

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. 1555/2013 dated 31.10.2013 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Tharmalingam Sundramoorthy (herein after referred to as the Applicant) against the order no C. Cus No. 1555/2013 dated 31.10.2013 passed by the Commissioner of Customs (Appeals), Chennai.

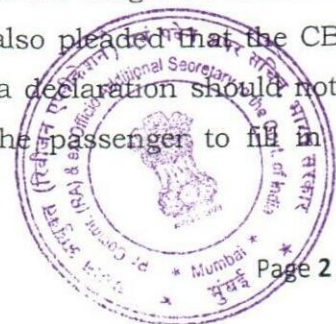
2. Briefly stated the facts of the case are that the applicant, an Indian national arrived at the Chennai Airport on 01.05.2013. Examination of his baggage resulted in the recovery of gold jewelry 19 nos gold chains totally weighing 118 gms totally valued at Rs. 3,46,584/- (Three Lacs Forty six thousand Five hundred and Eighty Four). After due process of the law vide Order-In-Original No. 215/2014 Batch D dated 25.02.2013, Original Adjudicating Authority confiscated the gold jewelry referred to above under section 111(d) and 111(l) of the Customs Act, 1962 read with section 3(3) of the Foreign trade (D &R) Act, 1992 and allowed the Applicant to redeem the gold on payment of Redemption fine of Rs. 1,74,000/-. A Penalty of Rs. 34,700/- 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. 1555/2013 dated 31.10.2013 rejected the appeal of the applicant.

4. The applicant has filed this Revision Application inter alia on the grounds that;

4.1 The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; Goods must be prohibited before import and export, non-declaration does not make the goods prohibited; The gold was purchased out of earnings for his sisters marriage, he was willing to pay the duty but the officers detained the goods for adjudication; there are no allegations that he had passed through the Green Channel; after interception at the baggage scan area, when he handed over the gold chain to the officers and then he was all along under the control of the Customs officers and had not crossed the green channel; sections 111 d, l, m, and o are not attracted in the case;

4.2 There was no ingenious concealment of the gold as it was handed over to the customs officer at the scan area itself and therefore the allegation that he had tried to smuggle the gold is not true. The Applicant also pleaded that the 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; He requested the officer to permit him to take back the gold but his plea was not heard.

4.3 The Revision Application 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 and reduce the redemption fine or penalty and thus render justice.

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 written declaration of the gold jewelry as required under Section 77 of the Customs Act, 1962 was not provided and had he not been intercepted he would have gone without paying the requisite duty, under the circumstances confiscation of the gold is justified.

7. However, the Revision Applicant claims that he was intercepted at the baggage scan area and much before the Green Channel, thereafter he was all along under the supervision of the officers. Government observes there is no allegation of ingenious concealment of the goods and neither was there a concerted attempt at smuggling these goods into India. Further it appears that one of the reasons for confiscation is that the gold was in commercial quantity. 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 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. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The Applicant has pleaded for re-export and for reduction of Redemption fine and penalty and Government is inclined to accept the plea.

8. Government allows redemption of the confiscated gold bars for re-export in lieu of fine. The gold bars totally weighing 114 gms totally valued at Rs. 3,12,304/- (Three Lacs Twelve thousand Three hundred and Four) is ordered to be redeemed for re-export. The redemption fine imposed is reduced from Rs. 1,74,000/- (Rupees One lac Seventy four thousand) to Rs. 1,25,000/- (Rupees One lac Twenty Five thousand) under section 125 of

the Customs Act, 1962. Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 34,700/- (Rupees Thirty Four thousand Seven hundred) to Rs 25,000/- (Rupees Twenty Five thousand) under section 112(a) of the Customs Act,1962.

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

10. So, ordered.

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

ORDER No. 123/2018-CUS (SZ) /ASRA/Mumbai

DATED 22.03.2018

To,

Shri Tharmalingam Sundramoorthy
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai 600 001.

True Copy Attested

SANKAR SAN 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.

