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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. 373/235/B/14-RA / 1469

Date of Issue 04.04.2018

ORDER NO. 125/2018-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 Nagalingam Selvanayagam

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. 680/2014 dated 17.04.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Nagalingam Selvanayagam (hereinafter referred to as the Applicant) against the order no C.Cus No. 680/2014 dated 17.04.2014 passed by the Commissioner of Customs (Appeals), Chennai.

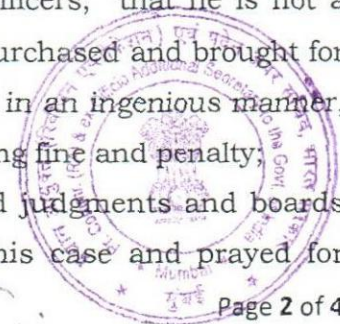
2. Briefly stated facts of the case are that the applicant, a Singaporean national had arrived at the Chennai Airport on 28.09.2012. He was intercepted as he was passing through the Green Channel. Examination of his person resulted in recovery of one gold chain, 8 gold bangles and 69 gold rings worn by him, totally weighing 321 gms valued at Rs. 9,44,703/- (Rupees Nine Lacs Forty four thousand seven hundred and three). The gold jewelry was recovered from a plastic pouch concealed inside a pant worn by the Applicant beneath his undergarment. The Applicant was arrested and subsequently released on bail. As the Applicant had not declared the impugned gold the original Adjudicating Authority vide his order 828/ 03.12.2013 absolutely confiscated the gold jewelry. A Penalty of Rs. 1,00,000/- 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. 680/2014 dated 17.04.2014 rejected the Appeal.

4. The applicant has filed this Revision Application interalia 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; He is the owner of the gold and he has not brought it for a third party, it was his personal belongings and purchased from his earnings and was not for commercial trade; Section 125 (2) of the Customs Act 1962 clearly mandates that option has to be given to the owner of the goods and in cases where the owner is not known the person from whose possession the such goods have been seized. The Applicant is eligible for concessional duty as he had stayed abroad for 4 years and the notification states that the officers of Customs shall ascertain whether the passenger is eligible to avail concessional duty which was not done by the officers; that he is not a frequent visitor or a die hard smuggler the gold was purchased and brought for the treatment of his father; the gold was not concealed in an ingenious manner, the authorities should have allowed re-export by imposing fine and penalty;

4.2 The Revision Applicant cited various assorted judgments and boards policies in support of re-export and in support of his case and prayed for



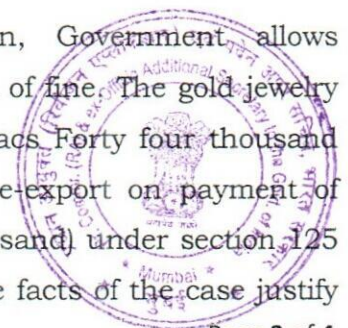
permission to re-export the gold on payment of nominal redemption fine and reduced personal penalty.

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. A written declaration of gold was not made by the Applicant as required under Section 77 of the Customs Act, 1962 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 facts of the case state that the Applicant had not yet exited the Green Channel when intercepted. 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. The Government is also of the opinion that a lenient view can be taken in the matter. The order of absolute confiscation is harsh and not justified. 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.

8. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold jewelry for re-export in lieu of fine. The gold jewelry weighing 321 gms valued at Rs. 9,44,703/- (Rupees Nine Lacs Forty four thousand seven hundred and three) 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. 80,000/- (Rupees Eighty 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.

(Handwritten Signature)
22.03.2018

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

ORDER No. 125/2018-CUS (SZ) /ASRA/MUMBAI

DATED 22.03.2018

To,

True Copy Attested

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

(Handwritten Signature)
22/03/18

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, Rajaji Salai Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File. 5. Spare Copy.

