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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No. 373/314/B/14-RA/7

Date of Issue 04.04.2018

ORDER NO. 129/2018-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 Jebamalai Mariyan Devakumar

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. 1175/2014 dated 07.07.2014 passed by the Commissioner of Customs (Appeals) Chennai.



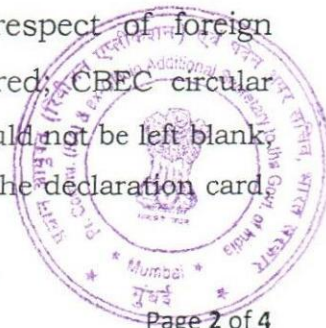
ORDER

This revision application has been filed by Shri Jebamalai Mariyan Devakumar against the order no C.Cus No. 1175/2014 dated 07.07.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, a Sri Lankan National arrived at the Chennai International Airport on 27.12.2013 and was intercepted while attempting to go through the green Channel without declaration at the Red Channel. On persistent and sustained questioning the Applicant revealed that a gold bit was concealed in his rectum. The gold bit weighing 420 gms valued at Rs. 12,51,180/- was recovered by the officers. As the Applicant had not declared the impugned gold the original Adjudicating Authority vide his order 1533/2013 – (AIR) dated 21.03.2014 absolutely confiscated the gold bit referred to above under section 111(d) and 111(l) of the Customs Act, 1962 and section 3(3) of the Foreign trade (D &R) Act, 1992. A Penalty of Rs. 1,25,000/- 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. 1175/2014 dated 07.07.2014 rejected the Appeal.

4. The applicant has filed this Revision Application inter alia on the following grounds that; the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; Gold is not a prohibited item and according to the liberalized policy gold can be released on payment of redemption fine and penalty; the Applicant was not aware that it was an offence to bring gold without proper documents; the only allegation against him is that he did not declare the gold; he was all along under the control of the Customs officers at the red channel and had not crossed the green channel; the seized gold belongs to him and was purchased through his own earnings; 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; 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;



4.2 It was also pleaded that The Hon'ble Supreme Court has 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; under section 125(2) of the Customs Act, 1962 option of redemption is mandatory and has be exercised. The absolute confiscation of the gold is therefore harsh and unjustified, and the gold should have been allowed for re-export without redemption fine and penalty. But the officers proceeded to detain the gold because it was not declared.

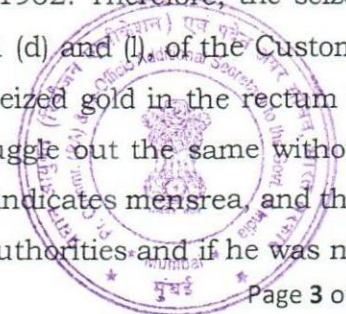
4.2 The Revision Applicant cited various assorted judgments and boards policies in support of his case and prayed for reduction of redemption fine and reduced personal penalty.

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 frequent passenger and therefore well aware of the rules. 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.

6. The Government has gone through the case records it is seen that the Applicant had concealed the gold bars in his rectum. In his statement he has admitted the offence committed. Government also notes that the gold bit were not declared by the Applicant. Filing of true and correct declaration under the Customs Act, 1962 is an absolute and strict obligation of any passenger as he was not an eligible passenger to import gold.

7. In his voluntary statement recorded after his interception the Applicant also revealed that he was offered a monetary consideration to conceal and carry the gold and hand it over to some other person in India. There is no doubt about the fact that the Applicant has contravened the provisions of Customs Act, 1962. Therefore, the seized gold bit is liable for absolute confiscation under section 111 (d) and (l) of the Customs Act, 1962 as the applicant had deliberately concealed the seized gold in the rectum to avoid detection and to dodge the Customs Officer and smuggle out the same without payment and payment of appropriate duty. This also clearly indicates mensrea, and that the Applicant had no intention of declaring the gold to the authorities and if he was not



intercepted before the exit, the Applicant would have taken out the gold bars without payment of customs duty. In view of the above mentioned observations the Government is inclined to agree with the Order in Appeal and holds that the impugned gold has been rightly confiscated absolutely. Hence the Revision Application is liable to be rejected.

8. Taking into consideration the foregoing discussion, Government upholds the Order in Appeal No. 1175/2014 dated 07.07.2014.

9. Revision Application is dismissed.

10. So, ordered.

*Ashok Kumar Mehta*  
21.2.2018

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

ORDER No. 129/2018-CUS (SZ) /ASRA/MUMBAI

DATED 21.02.2018

To,

Shri Jebamalai Mariyan Devakumar

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*  
21/2/18

**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.

