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सत्यमेव जयते

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. 373/365/B/14-RA / 2

Date of Issue 04.04.2018

ORDER NO.134/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 23.03.2018 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 Ayo Kiyadat @ Maung Maung Win

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. 1685/2014 dated 11.09.2013 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

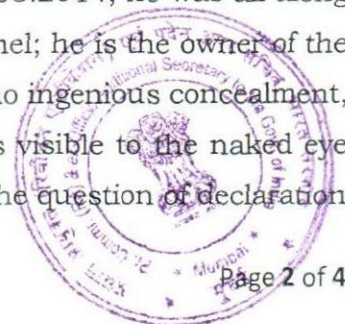
This revision application has been filed by Shri Ayo Kiyadat @ Maung Maung Win (herein after referred to as the Applicant) against the order no C. Cus No. 1685/2014 dated 11.09.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the Applicant, an Myanmar National arrived at the Chennai Airport on 07.08.2014. The Applicant was intercepted at the Green Channel as he was attempting to exit without declaration at the Red Channel. Examination of his baggage resulted in the recovery of a crude gold chain weighing 165 gms totally valued at Rs. 4,21,653/- ( Four Lacs Twenty one thousand Six hundred and Fifty three ). After due process of the law vide Order-In-Original No. 962/2014 Batch A dated 07.08.2014, Original Adjudicating Authority absolutely confiscated the gold chain 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. A Penalty of Rs. 42,500/- 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. 1685/2014 dated 11.09.2013 rejected the appeal of the applicant.

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; the gold chain seized is old, it has a religious significance and is always worn around my neck; he has not stated that the chain was brought for monetary benefits and the same has been wrongly recorded in the personal hearing. And he has already filed a rebuttal on the very next day explaining true facts; there is no law prohibiting a foreigner in wearing gold; his mother is a Indian national and accordingly he is of Indian origin and therefore as he fulfills all the conditions, and is therefore eligible to bring in gold at concessional rate; the facts have been recorded wrongly as I have arrived on 08.08.2014, however the adjudicating order is dated 07.08.2014; he was all along at the Red Channel and had not crossed the green channel; he is the owner of the gold and has not brought it for a third party; There was no ingenious concealment, as the gold chain was worn by the Applicant and it was visible to the naked eye and was shown to the officer and having seen the same the question of declaration





does not arise; he visits India occasionally and he fulfills the conditions and is eligible to bring gold on concessional rate of duty, Being eligible the Adjudication authority should have allowed the gold on payment of concessional rate or order re-export;

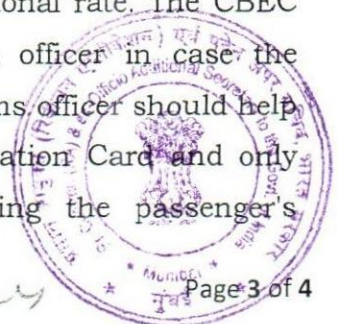
4.2 The Applicant also pleaded that the CBEC circular 9/2001 gives specific directions stating that a declaration should not be left blank, if not filled in the Officer should help the passenger to fill in the declaration card, such an exercise was not conducted by the officers; The Hon'ble Supreme Court 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;

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 without redemption fine or penalty or release the same on concessional rate of duty and set aside the redemption fine or penalty reduce the 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 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 facts of the case state that the Applicant was intercepted before he exited the Green Channel. Government observes that the Applicant claims to have worn the gold and there was no ingenious concealment of the goods and neither was there a concerted attempt at smuggling these goods into India. Government also observes that the Applicant is eligible to bring gold at concessional rate. 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. 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 lump for re-export in lieu of fine. The gold jewelry weighing 165 gms totally valued at Rs. 4,21,653/- ( Four Lacs Twenty one thousand Six hundred and Fifty three ) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 1,75,000/- (Rupees One lac Seventy Five 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. 42,500/- (Rupees Forty Two thousand Five hundred ) to Rs 35,000/- ( Rupees Thirty 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*  
27.3.2018

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

ORDER No. 134/2018-CUS (SZ) /ASRA/MUMBAI

DATED 23.03.2018

To,

Shri Ayo Kiyadat @ Maung Maung Win  
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*  
29/3/18  
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.

