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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
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Mumbai-400 005

F.No. 373/406/B/14-RA / 07

Date of Issue 04.04.2018

ORDER NO. 139/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 27.03.2018 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 Mohamed Ifthikar Mohamed Jan

Respondent : Commissioner of Customs(Airport), Bangalore.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus No. 295/2014 dated 12.09.2014 passed by the Commissioner of Customs (Appeals) Bangalore.



ORDER

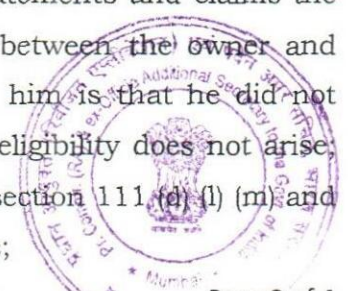
This revision application has been filed by Shri Mohamed Ifthikar Mohamed Jan (herein after referred to as the Applicant) against the order no C. Cus No. 295/2014 dated 12.09.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that based on passenger profiling the officers of the Air Intelligence Unit intercepted the applicant a Sri Lankan National, as he attempted to go through the Green channel of the Bangalore International Airport. The trolley bag and backpack carried by him was subjected to detailed examination. Apart from clothes and personal effects, the bag contained a small green coloured empty cloth handbag having two buckles holding the shoulder straps which were painted black. On scratching the buckles it was found to be made of gold. The body search of the Applicant resulted in the recovery of a silver coloured chain and ring worn by him, and on scratching it was also found to be made of Gold. The officers also recovered six bottles of Captain Morgan Rum. The Applicant was arrested and subsequently released on bail. After due process of the law the Original Adjudicating Authority, vide his order 92/2013 - AIU dated 18.10.2013 absolutely confiscated the crudely made gold jewelry and the gold buckles all, totally weighing 278.100 gms valued at Rs. 8,03,736/- ( Eight Lacs three thousand Seven hundred and thirty six) under the provisions of the Customs Act, 1962. The six bottles of Captain Morgan Rum valued at Rs. 5,610/- were also absolutely confiscated. 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. 295/2014 dated 12.09.2014 rejected the Appeal.

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

4.1. The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; as the statements were recorded by way of third degree methods he has retracted the statements and claims the gold, the Customs Act does not make any distinction between the owner and person carrying the goods; the only allegation against him is that he did not declare the gold; Being a foreign citizen the question of eligibility does not arise; The gold chain and ring were not concealed ingeniously; section 111 (d) (l) (m) and (o) of the Customs Act, 1962 are not attracted in this case;



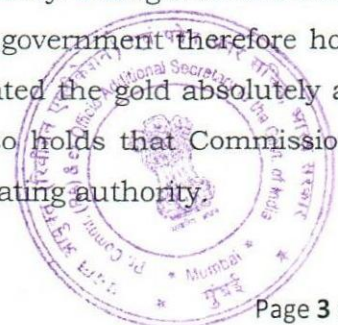


4.2 the Applicant also pleaded that the CBEC circular 9/2001 gives specific directions stating that a declaration should not be left blank, if not filled in the Officer should help the passenger to fill in the declaration card, such an exercise was not conducted by the officers; he had worn the gold chain and ring; He did not admittedly cross the Green Channel; The gold chain and ring was voluntarily handed over to the customs authorities and can be ascertained from the CCTV cameras and it should have been allowed re-export; The Applicant further pleaded that 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; Even assuming without admitting that he had not declared the gold it was only a technical fault;

4.3 The Revision Applicant cited various assorted judgments in support of re-export even when the gold was concealed 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 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 case records it is seen that the gold buckles were made and painted black to avoid detection. The gold chain and ring were also painted silver to avoid detection. There is absolutely no doubt that the concealment was very intelligently and elaborately planned so as to evade Customs duty and to smuggle gold into India. The aspect of allowing the gold for re-export can be considered when imports have been made in a legal manner. In this case the Applicant has blatantly tried to smuggle the gold into India in contravention of the provisions of the Customs, 1962. The said offence was committed in a premeditated and clever manner and 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. Being a foreign citizen he was also not an eligible passenger to import gold. The government therefore holds that the original adjudicating authority has rightly confiscated the gold absolutely and imposed a penalty of Rs. 1,25,000/-. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.



10. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C. Cus. No. 295/2014 dated 12.09.2014 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

12. Revision Application is dismissed.

13. So, ordered.

*(Handwritten Signature)*  
27/3/18

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

ORDER No. 139/2018-CUS (SZ) /ASRA/MUMBAI

DATED 27.03.2018

To,

Shri Mohamed Ifthikar Mohamed Jan

**True Copy Attested**

C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High court, 2<sup>nd</sup> Floor,  
Chennai 600 001.

*(Handwritten Signature)*  
28/3/18  
**SANKARSAN MUNDA**  
Asstt. Commissioner of Custom & C. Ex.

Copy to:

1. The Commissioner of Customs, Bangalore.
2. The Commissioner of Customs (Appeals), C. R. Bulilding, Bangalore.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

