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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. 373/232/B/14-RA/07

Date of Issue 04.04.2018

ORDER NO. 143/2018-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 Farook Naheem

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. 662/2014 dated 10.04.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

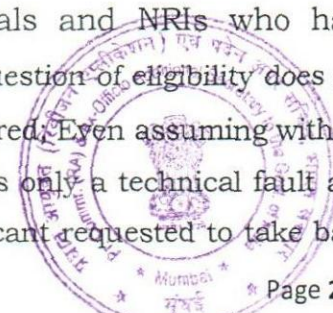
This revision application has been filed by Shri Farook Naheem (herein after referred to as the Applicant) against the order no C. Cus No. 662/2014 dated 10.04.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, a Sri Lankan citizen arrived at the Chennai Airport on 07.11.2013 and was intercepted as he attempted to go through the Green Channel without any baggage declaration at the Red Channel. Examination of his baggage and person resulted in the recovery of Gold jewelry totally weighing 172 gms valued at Rs. 4,70,729/- (Four Lacs Fifty Seventy thousand Seven hundred and Twenty nine) . After due process of the law vide Order-In-Original No. 1301/2013 Batch B dated 07.11.2013 Original Adjudicating Authority confiscated the gold jewelry under section 111 (d) (l) (m) and (o) of the Customs Act, 1962 read with section 3(3) Foreign Trade (D & R) Act, 1992. But allowed redemption of the gold jewelry on payment of a redemption fine of Rs. 2,36,000/- and also imposed penalty of Rs. 47,000/- under Section 112 (a) Aggrieved with the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus 662/2014 dated 10.04.2014 rejected the appeal of the applicant.

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

3.1 that the order of the appellate authority is bad in law, weight of evidence and probabilities of the case; that the Respondents failed to see that the seized gold chain is used and regularly worn: She was all along at the red channel under the control of the officers Being a foreign national he was unaware of the Law; he was wearing the gold jewelry at the time of interception near the scan area he showed the gold to the officers and having seen the same the question of declaration does not arise; The gold is old and having worn the same should have allowed the Applicant to re-export the gold; Being a foreigner the eligibility for concessional rate of duty is not applicable; There was no ingenious concealment of the gold;

3.2 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; being a foreign citizen the question of eligibility does not arise: the request for re-export of the gold was not considered; Even assuming without admitting that the applicant did not declare the gold , it is only a technical fault and being a tourist she should have been pardoned; the applicant requested to take back



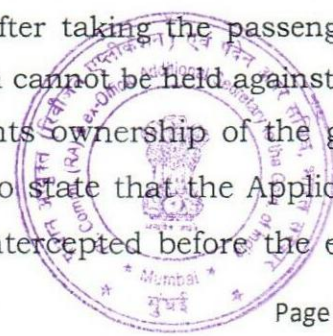
the gold which was denied; The object of the Customs Act, 1962 is to collect revenue and not to punish; the Applicant also pleaded that the CBEC circular 9/2001 gives specific directions stating that a declaration should not be left blank, if not filled in the Officer should help the passenger to fill in the declaration card, such an exercise was not conducted by the officers; Even assuming without admitting that the applicant did not declare the gold, it is only a technical fault and being a tourist he should have been pardoned;

3.3 The Revision Application cited various assorted judgments and boards policies in support of re-export and in support of her case and prayed for permission to re-export the gold bits and reduce the redemption and personal penalty and thereby render justice.

4. 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.

5. 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, she must face the consequences. The Applicant is a frequent traveller and 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. However, the facts of the case state that though the Applicant is a frequent traveller and this is the first offence of the Applicant. There was no ingenious concealment of the gold jewelry in fact it was worn by the Applicant and was visible. 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. Applicants ownership of the gold jewelry bar is not disputed. The facts of the case also state that the Applicant had not cleared the Green Channel exit and was intercepted before the exit.



Government, also holds that while imposing redemption fine and penalty the applicant can also be treated with a lenient view. The impugned order in Appeal is therefore liable to be modified.

7. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold bits for re-export in lieu of fine. The Redemption fine imposed on the gold jewelry totally weighing 172 gms valued at Rs. 4,70,729/- (Four Lacs Fifty Seven thousand Seven hundred and Twenty nine) is reduced from Rs. 2,36,000/- (Two Lacs thirty six thousand) to 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 reduction in the penalty imposed. The penalty imposed on the Applicant is also reduced from Rs. 47,000/- (Rupees Forty Seven thousand) to Rs 35,000/- (Rupees Thirty Five thousand) under section 112 (a) of the Customs Act, 1962

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

9. So, ordered.

(Handwritten Signature)
27.3.18

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 143/2018-CUS (SZ) /ASRA/ MUMBAI

DATED 27-03.2018

To,

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

True Copy Attested

(Handwritten Signature)
28/3/18
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.

