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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. 373/236/B/14-RA/०७१

Date of Issue 05.04.2018

ORDER NO. 146/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 28.03.2018 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 Sinnathamby Nadarajasingham

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. 862/2014 dated 21.05.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Sinnathamby Nadarajasingham against the order no C.Cus No. 862/2014 dated 21.05.2014 passed by the Commissioner of Customs (Appeals), Chennai.

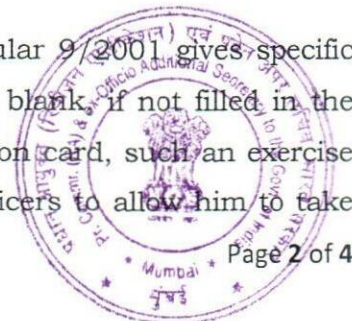
2. Briefly stated facts of the case are that the applicant, a Sri Lankan national arrived at the Chennai International Airport on 27.09.2013. Examination of his person resulted in recovery of one gold chain worn by him, totally weighing 95.6 gms valued at Rs. 2,63,489/- (Two lacs sixty three thousand Four hundred and eighty nine). After due process, the original Adjudicating Authority vide his order 1136 Batch B dated 27.09.2013 confiscated the gold chain referred to above under section 111(d), 111(l), 111(m) and 111(o) of the Customs Act, 1962 and section 3(3) of the Foreign trade (D &R) Act, 1992, But allowed the Applicant an option to redeem the gold on payment of redemption fine of Rs. 1,40,000/-. A Penalty of Rs. 10,000/- 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. 862/2014 dated 21.05.2014 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 did not admittedly pass through the green channel, but was all along at the red channel under the control of the officers, Being a foreign national he was not aware of the law; he is the owner of the gold chain and it was not brought for commercial reasons; the Applicant had worn the gold chain and it was not concealed, the same was visible and he showed it to the officer therefore the question of declaration does not arise; section 111 d, l m, and o are not attracted in the case; ; 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 is only a technical fault.

4.2 The Applicant further 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 requested the officers to allow him to take



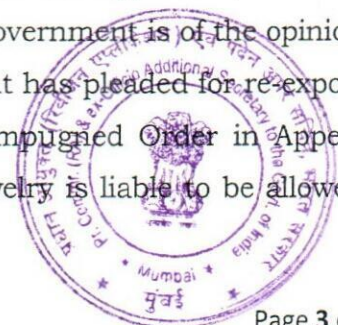
back the gold chain which was not accepted by the officers; The Hon'ble Supreme Court has in the case of Om Prakash vs Union of India states that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions; the worn gold jewelry should have been allowed for re-export without redemption fine and penalty. But the officers proceeded to detain the jewelry because it was not declared; the gold was not concealed in an ingenious manner.

4.3 The Revision Applicant cited various assorted judgments and boards policies in support of re-export 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 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.

7. However, the facts of the case state that the Applicant was intercepted before he exited the Green Channel. The gold was worn by the Applicant, hence, there was no ingenious concealment of the goods. 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. 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 the government is inclined to accept the plea. 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 chain for re-export in lieu of fine. The redemption fine imposed on the gold jewelry weighing 95.6 gms valued at Rs. 2,63,489/- (Two lacs sixty three thousand Four hundred and eighty nine) is ordered to be reduced from Rs. 1,40,000/- (Rupees One lac Forty thousand) to Rs. 1,00,000/- (Rupees. One lac) 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 therefore reduced from Rs. 10,000/- (Rupees Ten Thousand) to Rs 7,500/- (Rupees. Seven thousand Five hundred) 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)
28/07/2018

(ASHOK KUMAR MEHTA)

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

ORDER No. 146/2018-CUS (SZ) /ASRA/MUMBAI

DATED 28-03-2018

To,

Shri Sinnathamby Nadarajasingham

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

True Copy Attested

(Handwritten Signature)
24/1/18

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.

