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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. 373/405/B/14-RA / 6^X

Date of Issue 10.04.2018

ORDER NO. 158/2018-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 Veerappan Sisubalan

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. 1876-1877/2014 dated 14.10.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

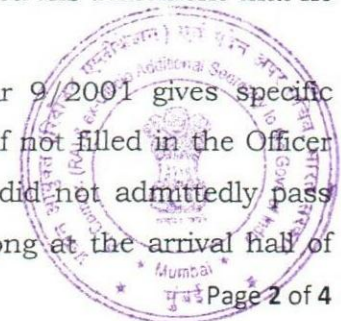
This revision application has been filed by Shri Veerappan Sisubalan against the order no C.Cus No. 1876-1877/2014 dated 14.10.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, had arrived at the Chennai Airport on 12.09.2013. He was intercepted at the green channel without making a declaration, examination of his baggage and person resulted in recovery of assorted gold jewelry, totally weighing 294.4 gms valued at Rs. 8,30,502/- (Rupees Eight lacs thirty thousand Five hundred and two). The Applicant was arrested and subsequently released on bail. As the Applicant had not declared the impugned gold the original Adjudicating Authority vide his order in original dated 04.04.2014 confiscated the gold jewelry and allowed it to be redeemed on payment of Rs. 4,15,000/-. A Penalty of Rs. 80,000/- 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. 1876-1877/2014 dated 14.10.2014 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; The gold jewelry was purchased by the Applicant for the proposed wedding of his daughter; he was intercepted near the scan area and on being asked whether he was carrying any gold he showed the gold jewelry and therefore the allegation that he was trying to smuggle the gold is not correct; The gold jewelry was kept in his pant pockets and was not concealed, One gold chain was worn by the Applicant and he voluntarily gave it to the customs officers this can be ascertained from the CCTV records; Having resided in Singapore from 22.08.2011 to 12.09.2013 and being an Indian citizen he is eligible to import gold at a concessional rate under Notification 03/2012, He was also willing to pay appropriate duty, But the officers did not hear him and recorded his statement that he is not the owner of the gold and proceeded to book the case.

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; he did not admittedly pass through the green channel. He was at the red channel all along at the arrival hall of



Airport; part of the gold jewelry was worn by the Applicant and it is his personal belongings and was not for commercial trade; even assuming without admitting that he did not declare the gold jewelry it is only a technical fault and it can be pardoned considering his stay abroad and eligibility.

4.3 The Revision Applicant cited various assorted judgments and boards policies in support of his case and prayed that the Hon'ble Revisionary Authority reduce the redemption fine and personal penalty and thus render justice.

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 redemption fine and personal penalty was reduced and requested for the same. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. The Applicant has claimed that he is an eligible passenger for concessional rate of customs duty, however this benefit can be extended if he had had declared the gold jewelry. The facts of the case state that the Applicant was intercepted at the scan area while trying to exit the Green Channel. 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, Government also observes that the ownership of the gold is not disputed, the gold chain was worn by the Applicant, and the rest of the gold was recovered from his pant/trouser pockets hence, there was no ingenious concealment of the goods. The gold was not in primary form. 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. It is noted that there is no previous offence registered against the Applicant. As per Notification no. 26/2012 dated 18.04.2012 the Applicant is an eligible passenger to bring gold at concessional rate of duty. In view of the above facts, the Government is of the opinion that a lenient view can be taken while imposing redemption fine and penalty in the matter. The impugned Order in Appeal therefore is liable to be modified.

8. Taking into consideration the foregoing discussion, Government reduces redemption fine imposed on the confiscated gold jewelry totally weighing 294.4 gms valued at Rs. 8,30,502/- (Rupees Eight lacs thirty thousand Five hundred and two) is reduced from Rs. 4,15,000/- (Rupees Four Lacs Fifteen thousand) to Rs. 3,00,000/- (Rupees Three lacs). 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. 80,000/- (Rupees Eighty thousand) to Rs. 70,000/- (Rupees. Seventy 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. Revision application is partly allowed on above terms.

11. So, ordered.

Ashok Kumar Mehta
28/3/18

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

ORDER No. 158 /2018-CUS (SZ) /ASRA/MUMBAI

DATED 28.03.2018

To,

Shri Veerappan Sisubalan

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

True Copy Attested

Sankarsan Munda
10/4/18
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, Rajaji Salai Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

