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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. 373/79/B/14-RA/27

Date of Issue 11.04.2018

ORDER NO. 166/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 09.04.2018 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. Ameerali

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. 179/2014 dated 05.02.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

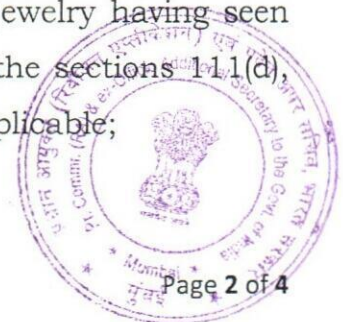
This revision application has been filed by Shri. Ameerali against the order no C. Cus No. 179/2014 dated 05.02.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, an Indian National, had arrived at the Chennai Airport on 21.07.2013 and was cleared on payment of duty. After three hours he was caught while he attempted to go through the exit taking 134.2 gms of gold jewelry totally valued at Rs. 3,33,010/- (Rupees Three lacs Thirty three thousand and ten) which was hidden near the conveyor belt in the arrival hall without declaration at the Red channel. After due process the Original Adjudicating Authority, vide his order 869/2013 Batch B dated 21.07.2013 absolutely confiscated the gold jewelry referred to above. A Penalty of Rs. 34,000/- 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. 179/2014 dated 05.02.2014 rejected the Appeal.

4. The applicant has filed this Revision Application interalia 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 per the findings there are no specific allegations that the applicant had crossed the green channel; The Applicant never concealed and voluntarily gave the gold to the officers; He was all along the red Channel under the control of the officers; That he was wearing the gold jewelry; he had orally informed the officers that he possessed gold jewelry having seen the gold the question of declaration does not arise; the sections 111(d), 111(l) and 111(m) of the Customs Act, 1962 is not applicable;

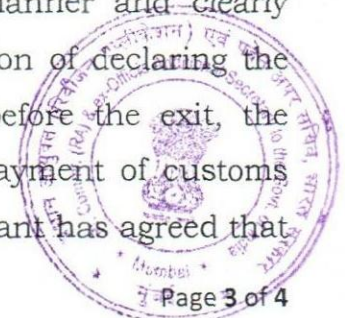


4.2 The Applicant further submitted that the CBEC circular 9/2001 gives specific directions stating that a declaration should not be left blank, if not filled in the Officer should help the passenger to fill in the declaration card; The Hon'ble Supreme Court has in the case of Om Prakash vs Union of 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 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 observed that the Applicant was cleared earlier on payment of applicable Customs duty and he did not declare the gold jewelry at the time. The gold jewelry was concealed near the conveyor belt in the Arrival hall and was retrieved later and after three hours an attempt was made to take it out of the arrival hall avoiding detection; There is absolutely no doubt that the concealment near the conveyor belt was intelligently 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. This is not a simple case of mis-declaration. 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. The Original adjudication order states that the Applicant has agreed that



the gold jewelry was being carried it for someone else, and that he was offered a monetary consideration to carry it. He is not eligible to import gold. He was also not an eligible passenger to import gold. The above acts have therefore rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed a penalty of Rs. 34,000/-. 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. 179/2014 dated 05.02.2014 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

12. Revision Application is dismissed.

13. So, ordered.

Ashok Kumar Mehta
9.4.2018

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

ORDER No. 166/2018-CUS (SZ) /ASRA/MUMBAI

DATED 09.04.2018

To,

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

True Copy Attested

Sankar San Munda
SANKAR SAN MUNDA
Asstt. Commissioner of Custom & G. 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.

