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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. 373/407/B/14-RA / 110

Date of Issue 18.04.2018

ORDER NO. 177/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 16.04.2018 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 Rabeek Raja

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. 032/2014 dated 08.08.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

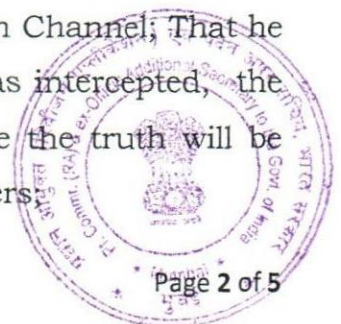
This revision application has been filed by Shri Rabeek Raja (herein after referred to as the Applicant) against the Order in Appeal no C. Cus No. 032/2014 dated 08.08.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 10.03.2013 and was intercepted by the Customs Officers and examination of his baggage and person resulted in the recovery of 2 (two) Gold chains rods kept concealed in two packets in his underwear totally weighing 119.75 gms valued at Rs. 3,39,731/- (Three Lacs Thirty nine thousand Seven hundred and Thirty one). After due process of the law vide Order-In-Original No. 52/2014 AIU A dated 10.03.2014 Original Adjudicating Authority absolutely confiscated the gold chains under section 111 (d) (l) (m) and (o) of the Customs Act, 1962 read with section 3(3) Foreign Trade (D & R) Act, 1992. A penalty of Rs. 1,10,000/- was also imposed under Section 112 (a) of the Customs Act, 1962.

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. 032/2014 dated 08.08.2014 rejected the Appeal.

4. The applicant has filed this Revision Application inter alia 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; The Applicant had worn the gold chain and the same belongs to his family; he had not concealed the chains and therefore he should be allowed to re-export the gold; As he had worn the gold chains he did not declare it; there are no specific allegations that he had tried to cross the Green Channel; That he voluntarily gave the chains to the officers when he was intercepted, the CCTV video record if the authorities peruse the same the truth will be ascertained; he had orally declared the gold to the officers.



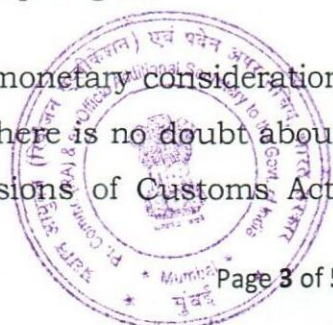
4.2 The Applicant further pleaded that the CBEC circular 9/2001 gives specific directions stating that a declaration should not be left blank, if not filled in the Officer should help the passenger to fill in the declaration card; The Hon'ble Supreme Court has in the case of Om Prakash vs Union of India 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; section 111 (d) (l) (m) and (o) of the Customs Act, 1962 are not applicable in the case. He is the owner of the gold and he has not brought it for a third party.

4.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing gold for redemption under section 125 of the Customs Act, 1962 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 redemption 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 Applicant is a frequent traveller. The gold chains were wrapped in carbon paper and kept concealed in the Applicants underwear. The Applicant claims to have worn the chains however Government observes that the carbon paper wrappings of the gold chains and the white adhesive tapes confiscated alongwith the gold chain tell a different story. Government also notes that the gold chains were not declared by the Applicant. Filing of true and correct declaration under the Customs Act, 1962 is an absolute and strict obligation of any passenger as he was a frequent traveller and not an eligible passenger to import gold.

7. The Applicant also revealed that he was offered a monetary consideration of Rs. 10,000/- to conceal and carry the gold to India. There is no doubt about the fact that the Applicant has contravened the provisions of Customs Act,



1962. Therefore, the seized gold rods are liable for absolute confiscation under provisions of the Customs Act, 1962 as the applicant had deliberately concealed the seized gold to avoid detection and to dodge the Customs authorities and smuggle out the same without payment of appropriate duty. This clearly indicates mensrea, 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. In view of the above mentioned observations the Government is inclined to agree with the Order in Appeal and holds that the impugned gold has been rightly confiscated absolutely. Hence the Revision Application is liable to be rejected.

8. Taking into consideration the foregoing discussion, Government upholds the Order in Appeal No. 032/2014 dated 08.08.2014.

9. Revision Application is dismissed.

10. So, ordered.

(ASHOK KUMAR MEHTA)

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

ORDER No. 177/2018-CUS (SZ) /ASRA/MUMBAI

DATED 16.04.2018

True Copy Attested

To,

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

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.

