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SPEED POST

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
8<sup>th</sup> Floor, World Trade Centre, Centre – I, Cuffe Parade,  
Mumbai-400 005

F.No. 373/11/B/14-RA

Date of Issue 19.04.2018

ORDER NO. 179/2018-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 Natther Kaja Mohideen

Respondent : Commissioner of Customs(Airport), Tiruchirappally.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 187/2013 (TTN) dated 12.11.2013 passed by the Commissioner of Customs & Central Excise (Appeals) Tiruchirappally.



ORDER

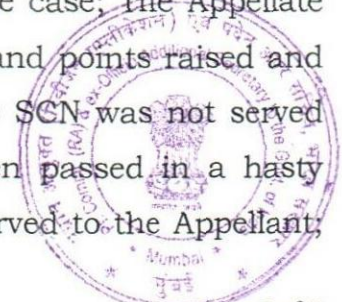
This revision application has been filed by Shri Natther Kaja Mohideen (herein after referred to as the Applicant) against the Order in Appeal no. 187/2013 dated 12.11.2013 passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirappally.

2. Briefly stated the facts of the case are that the applicant, a Sea passenger and Sri Lankan passport holder, arrived at the Tuticorin Customs Port on 11.08.2011. The Applicant was intercepted by the Directorate of Revenue Intelligence (DRI) officers in the hotel room of Hotel Vignesh, Tiruchirappally. examination of his baggage resulted in the recovery of 30 (Thirty) Gold rings coated with silver totally weighing 1045 gms valued at Rs. 27,58,800/- ( Twenty seven Lacs Fifty eight thousand Eight hundred). During the investigations the Applicant revealed that the original metal rings available in the bags were removed and replaced with the gold rings. After due process of the law vide Order-In-Original No 11/2013 dated 21.03.2013 the Original Adjudicating Authority absolutely confiscated the gold rings under section 111 (d) (l) and (m) of the Customs Act, 1962 read with Notification 31/2003. A penalty of Rs. 5,00,000/- 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. Commissioner of Customs & Central Excise (Appeals), Tiruchirappally vide his Order in Appeal No. 187/2013 (TTN) dated 12.11.2013 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 Appellate authority has simply glossed over the judgements and points raised and no reason has been given to reject the appeal; The SCN was not served upon the Applicant; The impugned order has been passed in a hasty manner, without verifying whether the SCN was served to the Appellant;



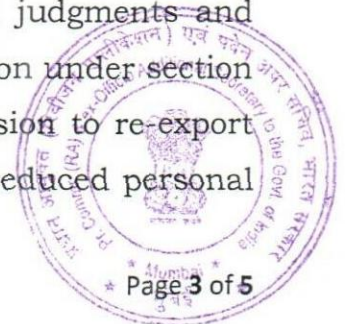


After repeated reminders the Adjudicating Authority sent the SCN dated 08.02.2012 with covering letter dated 25.02.2013, the same was received on 27.02.2013. But a personal hearing letter was received on 21.02.2013 fixing the Personal hearing on 25.02.2013; The Order in Original was issued on 21.03.2013.

4.2 The Applicant further pleaded that the statement given before the DRI officers was retracted when submitting his bail application in court; The goods have not been recovered when he came from SriLanka but have been admittedly recovered through a town seizure; He is not a frequent visitor, nor a smuggler and has no previous offence registered against him; He is the owner of the gold and it was brought from the local market; In case of failure to produce documents regarding legal import, the burden to prove that it is smuggled lies with the department; Mere non production of bill or documents cannot lead to an inference that the gold is smuggled; The gold does not have foreign markings; The CBEC vide circular FN 04/149/65-Cus-III dated 14.12.65 state that in cases of town seizure the onus of is on the Customs Authorities to prove that the goods are smuggled is on the Custom Authorities.

4.3 The Applicant further pleaded that the evidence should justify unauthorized importation and not unauthorized possession of goods; The revenue has failed to discharge its burden to prove that these goods were of smuggled character; the Applicant submits that while coming from Srilanka to Tuticorin he has completed all customs formalities; 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; 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.

4.4 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.



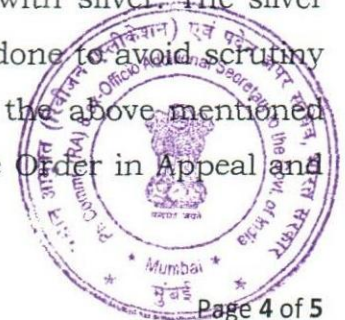
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5. A personal hearing in the case was held on 07.03.2018, the Advocate for the respondent Shri Palanikumar attended the hearing he re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where redemption for re-export of gold was allowed. Nobody from the department attended the personal hearing.

6. With regard to the non-receipt of Show cause notice dated 08.02.2012. It is noted that as per the Applicants entreaty the Show cause notice was served on the Applicant as per their request, with covering letter dated 25.02.2013, the same was received by the Applicant on 27.02.2013. The Government observes that the Order in Original was issued on 21.03.2013 ie almost a month after receipt of the order by the Applicant. Thus the Applicant had sufficient time to submit his contentions and therefore the issue has no merit.

7. The Government has gone through the case records, it is observed that the Applicant has come to India through Tuticorin Port on 11.08.2011. He was intercepted by the officers of DRI, and vide Mahazar dated 11.08.2011 30 gold rings, painted with silver coating totally weighing 1045 gms valued at Rs. 27,58,800/- ( Twenty seven Lacs Fifty eight thousand Eight hundred) were seized from his possession. The Applicant claims to have purchased the gold from the local market, the Government however notes that the Applicant has not put forth any evidence to support this claim. Further he has not produced any bill or documents supporting his contention that the gold was purchased locally. In his statements he has admitted to have smuggled the gold rings coated with silver without declaring it at the entry port so as to avoid payment of duty. The retraction of this statement is an afterthought. He was intercepted on the same day of his arrival, therefore his contention that he purchased the gold locally does not appear to be genuine. Gold is normally traded in jewelry, or in primary bars forms, and not in the form of rings of gold, coated with silver. The silver coating also leads credence to the fact that the same was done to avoid scrutiny by the Customs Officers at the port of entry. 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 187/2013 (TTN) dated 12.11.2013 passed by the Commissioner of Customs & Central Excise (Appeals) Tiruchirappally.

9. Revision Application is dismissed.

10. So ordered.

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

ORDER No. 179/2018-CUS (SZ) /ASRA/mumbai DATED 16. 04.2018

To,

Shri Natther Kaja Mohideen  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High court, 2<sup>nd</sup> Floor,  
Chennai 600 001.

**True Copy Attested**

**SANKARSAN MUNDA**  
Asstt. Commissioner of Custom & C. Ex.

Copy to:

1. The Commissioner of Customs, Tiruchirappally.
2. The Commissioner of Customs & Central Excise (Appeals) Tiruchirappally.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.



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