



सत्यमेव जयते

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

F.No. 373/120/B14-RA / 1077

Date of Issue 06.02.2018

ORDER NO. 17/2018-CUS(SZ)/ASRA/MUMBAI DATED 31.01.2018
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 Thiyagu.

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. 188 &
189/2014 dated 10.02.2014 passed by the Commissioner of
Customs (Appeals), Chennai..



ORDER

These revision applications has been filed by Shri Thiyagu, hereinafter referred to as the "Applicant", against order-in-appeal no. C.Cus No. 188 and 189/2014 dated 10.02.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Brief facts of the case are as follows; Shri Thiyagu (the applicant), a Indian national, was intercepted when he was attempting to walk through the green Channel. Examination of his baggage and person resulted in the recovery of four gold chains totally weighing 104 gms valued at Rs. 2,63,980/-. As the Applicant was not eligible passenger to bring gold and as a proper declaration with-regard to import of gold was also not made by him. The Assistant Commissioner of Customs, Airport vide Order-In-Original dated 04.06.2013 confiscated the gold valued at Rs.2,63,980/- under section 111(d), (l), (m) & (o) of the Customs Act, 1962. read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, 1962, with redemption option on payment of fine of Rs.1,32,000/-. Penalty of Rs. 26,400/- under Section 112 (a) of the Customs Act, was also imposed on the applicant.

3. Aggrieved by this order the applicant filed an appeal before the Commissioner of Customs (Appeals) Chennai. The Commissioner (Appeals) in his Order-in-Appeal No. . 188 & 189/2014 dated 10.02.2014 held that the order of the Original Adjudicating Authority to be fair and appropriate and the penalties imposed to be just and reasonable and rejected the Appeal.

4. Being aggrieved with the Order in Appeal of the Commissioner (Appeals) the Applicant has filed this Revision Applications interalia on the following grounds.

4.1 Order of the respondent is against law, weight of evidence and circumstances of the case.

4.2 The applicant avers that he never went to the green channel but was all along at the red channel along with the Custom Officers.



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4.3 The Applicant further submits that he had orally admitted that he possessed gold jewellery in his handbag at the time of interception at the arrival hall of Anna international airport, Chennai and hence question of declaration does not arise. He further submits that when oral declaration is permissible under law the authority can accept the oral declaration of the passenger. Mere not filling up the declaration card is not an offence.

4.4 The appellant never concealed the gold and he kept the same in his hand bag and he was also wearing part of gold jewellery. The appellant further submits that he was all along under the control of the officers of customs and he was at the red channels and he had not passed through the green channel.

4.8 The appellant further submits that he is not a frequent visitor and he last left India on 25.09.2012 and returned to India after 252 days on 04.06.2013, more than required period therefore he is eligible for importing gold at a concessional rate as per Notification No. 03/2012 and he is an eligible passenger to bring gold up to 1Kg..

The Revision Applicant has cited various assorted judgments in support of his case, and prayed that the order of the Appellate Authority be set aside and permit him to re-export the gold without redemption fine and penalty or release the same on concessional rate of duty.

5. A personal hearing in the case was held on 04.12.2017, the Advocate for the respondent Shri Palanikumar requested for an adjournment due to a medical emergency. The personal hearing was rescheduled on 29.01.2018, which was attended by the Shri Palanikumar. The Advocate, re-iterated the submissions filed in the Revision Application and cited the decisions of GOI/Tribunals in their favour and pleaded for reduction in redemption fine and penalty.

6. The Government has gone through the facts of the case. The Applicant is an Indian national working in Singapore he is not a frequent traveler and has come back to

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India after 252 days. However, he has not declared the gold as required under Section 77 of the Customs Act, 1962. In order to avail the benefits of concessional rate of duty under notification No. 03/2012 dated 16.01.2012 a proper declaration should have been made and as the applicant was eligible for concessional rate he would have been able to avail the concession. In the instant case if the Applicant was not intercepted he would have left the airport without paying Customs duty and therefore as the applicant had not declared the gold, confiscation of the gold is justified.

7. However, the Applicant is not a frequent traveler and has come back to India after 252 days. He insists that he had declared the gold orally and from the facts of the case it appears that the Applicant was wearing one of the gold chains when he was intercepted. The gold chain were not indigenously concealed in any manner. The gold is not primary gold but is in the form of jewelry. The Custom authorities have also not found any thing dutiable other than the gold chains. The Applicant also does not appear to be acting as a carrier and it is not a case of concealment of gold, ownership of the gold is also not disputed. Considering all factors, the Government holds that The Original Adjudicating Authority has properly used his discretion in allowing redemption on payment of redemption fine under section 125 and penalty under section 112 (a) of the Customs Act, 1962. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority. However, Government holds that while imposing redemption fine and penalty the applicant can be treated with a lenient view.

7. Taking into consideration the foregoing discussion, The redemption fine in lieu of confiscation allowed for re-export imposed in lieu of the confiscation of gold totally weighing 104 gms, valued at Rs. 2,63,980/- (Rupees Two lacs sixty three thousand nine hundred and eighty) is ordered to be reduced from Rs. 1,32,000/- (Rupees One lac thirty two thousand) to Rs.50,000/- (Rupees Fifty Thousand). Government also reduces the personal penalty imposed on the Applicant from Rs. 26,400/- (Rupees Twenty six thousand four hundred) to Rs. 10,000/- (Rupees Ten thousand) under section 112(a) of the Customs Act, 1962.



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9. The impugned order stands modified to that extent. Revision application is partly allowed on above terms.

10. So, ordered.

(Handwritten Signature)
5/1/18

(ASHOK KUMAR MEHTA)

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

ORDER No. 17/2018-CUS (SZ)/ASRA/mumbai

DATED 31.01.2018

To,

Shri Thiyagu
S/o Raman,
624, North Street Pudur,
Orathanadu, Tajore.

True Copy Attested

(Handwritten Signature)
31/1/18

Copy to:

SANKARSAN MUNDA
Asstt. Commissioner of Customs & C. Ex.

1. The Commissioner of Customs, A. I. 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.

