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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. 373/436,437 &438/B/14-RA | 11/18

Date of Issue 19.4.2018

ORDER NO. ¹⁸⁴⁻¹⁸⁶ /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 V. Manoharan,
: Shri D. Veerappan
: Shri S. Raman

Respondent : Commissioner of Customs, Tiruchirapally.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. 29
to 31/2014 dated 19.08.2014 passed by the
Commissioner of Customs & Central Excise (Appeals)
Tiruchirapally



ORDER

These three revision applications have been filed by Shri. V.Manoharan, Shri.D.Veerappan and Shri.S.Raman (herein after referred to as applicants) against the above Order-In Appeal No. 29 to 31/2014 dated 19.08.2014 passed by the Commissioner of Customs & Central Excise (Appeals) Tiruchirapally. Since a common issue is involved in all these Revision Applications and as they are being represented by the same advocate Shri Palanikumar, these Revision Applications are being disposed by a common order.

2. The brief facts of the case are that the Applicant Shri.V.Manoharan arrived by flight from Singapore on 11.05.2013. The applicant was intercepted as he was attempting to walk through the Green Channel without any declaration. On noticing that one of his pant pockets bulging outside, the officers asked him to show them what was inside that pocket. Examination of his person resulted in the recovery of pouches containing gold jewelry totally weighing 383 grams of gold ornaments valued at Rs. 9,80,097/- (Nine lacs Eighty thousand and Ninety thousand) Enquiries made regarding the gold jewelry revealed that the gold ornaments recovered did not belong to him, but were given to him by one Shri Ramu in Singapore, who instructed him to hand over the gold to one Shri Veerappan who would be waiting outside the Airport to receive the jewels. The Applicant Shri. Veerappan who was waiting outside of Airport was intercepted and the officers brought both S/Shri Manoharan and Veerappan inside the Airport and checked the hand bag of Shri Veerappan and found therein one packet of gold ornaments weighing 210 gms valued at Rs. 5,37,390/-(Rupees Five lacs Thirty seven thousand three hundred and ninety). On enquiry, Shri Veerappan informed that he collected the gold ornaments from a passenger who arrived from Singapore by Air India and that the gold ornaments were sent by one Ramu from Singapore, who requested him (Shri Veerappan) to collect the gold from a passenger and give Rs.2500/- to him. Accordingly, he collected the said gold from him and gave Rs.2500/-. Neither any duty paid receipt nor any legal document for the licit import in respect of the gold chains was found on his

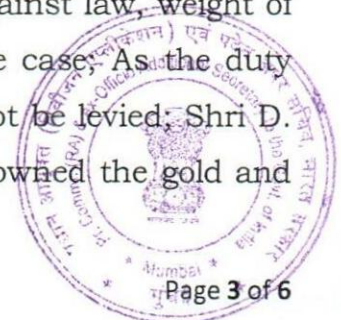
possession. Further it was also verified from the office records and found that no Baggage Receipt for clearance of the said gold ornaments had been raised during the day i.e. on 11.05.2013.

3. Both Shri.V. Manoharan and Shri D. Veerappan disowned the gold and stated that they were only carriers. The entire impugned gold was claimed by Shri S. Raman, and he immediately paid Rs. 5,90,000/- on 12.05.2013 as advance deposit towards customs duty, fine and penalty. Shri S. Raman stated that he has been affected by Chicken Pox and fever, and could not attend personally. As he could not come personally he had sent the ornaments through Shri V. Manoharan to be handed over to Shri D. Veerappan for his Sister's marriage. After due process of the law vide Order-In-Original No. 01/2014 - AIU dated 16.01.2014 Original Adjudicating Authority absolutely confiscated the gold jewelry valued at Rs. 9,80,097/- seized from Shri V.Manoharan, the 210 gms of gold jewelry valued at 5,37,390/- seized from Shri D. Veerappan was also absolutely confiscated under section 111 (d) (i) (l) and (m) of the Customs Act, 1962 read with section 3(3) Foreign Trade (D & R) Act, 1992. A penalty under Section 112 (a) & (b)of the Customs Act,1962 of Rs. 1,10,000/-, 2,00,000/- and Rs. 3,80,000/- was imposed on Shri D. Veerappan, Shri V.Manoharan and Shri S. Raman respectively.

3. Aggrieved by this order the Applicants filed an appeals with the Commissioner of Customs & Central Excise (Appeals) Trichy. The Commissioner of Customs & Cetral Excise (Appeals) Trichy vide his Order in Appeal C.Cus No 29 to 31/2014 dated 19.08.2014 rejected the Appeal.

4. The applicants have filed these Revision Application interalia on the grounds that;

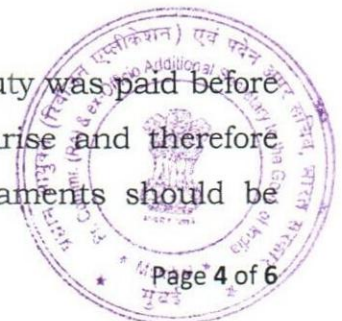
4.1 the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case. As the duty has been paid before issuance of SCN penalty cannot be levied. Shri D. Veerappan and Shri V. Manoharan have both disowned the gold and the same is claimed by Shri S. Raman;



4.2 Shri V. S. Raman claims that was given sufficient money to pay appropriate duty but he failed to do the same; The non declaration by Shri V. Manoharan was only a technical fault; Section 125 of the Customs Act clearly mentions that the whenever confiscation is authorized the can be released on payment of fine and penalty, and the goods shall be given to the owner of the goods, or the person from whose custody the goods were recovered; The Apex court in the case of Hargovind Dash vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has pronounced that the quasi judicial authorities should use the discretionary powers in a judicious and not an arbitrary manner; The Hon'ble High Court of Andhra Pradesh in the case of Sheikh Jamal Basha vs GOI 1997 (91) ELT 277 (AP) has stated held that under section 125 of the ACT is Mandatory duty to give option to the person found guilty to pay fine in lieu of confiscation; A careful dissection of section 124,125 and 126 is conducted and if the goods are envisaged only for confiscation then it would render the said sections meaningless, if the goods are absolutely confiscated the options of redemption under section 125 would also be inoperative The Revision Applicant cited various assorted judgments and Boards policies in support of allowing gold for redemption or allow re-export under section 125 of the Customs Act, 1962. The Applicants also pleaded and prayed for nominal redemption fine and reduced personal penalty and thus render justice.

4.3 Shri D. Veerappan has reiterated that he has not committed any offence or smuggled any goods; He was present at the Airport on the instruction of Shri Raman to collect the gold sent by him as he was personally unwell; As Shri Raman has paid an advance of Rs. 5,90,000/- as advance deposit towards customs duty, fine and penalty, before the issuance of SCN he requested for setting aside the impugned order and personal penalty of Rs. 1,10,000/-.

4.4 Shri V. Manoharan also claimed that as the duty was paid before the issuance of SCN, proposing penalty does not arise and therefore penalty cannot be levied; that the seized gold ornaments should be



released on payment of Redemption Fine as there are no provisions for absolute confiscation of the goods; The Applicant also pleaded for setting aside the impugned Order in Appeal and set aside the 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 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 gold jewelry was being sent from abroad with a specific intention to evade the payment of customs duty. The Applicants were well aware that they were contravening the provisions of the Customs Act, 1962, as Shri V. Manoharan did not declare the gold to the Customs officers. Filing of true and correct declaration under the Customs Act, 1962 is an absolute and strict obligation of any passenger. Government also notes that part of the gold jewelry sent by Shri S. Raman also succeeded in evading the customs and was found on the person of Shri D. Veerappan who was apprehended outside the airport. Shri D. Veerappan tried to run when confronted with the Custom Officers and is a clear indication that he was aware of the fact that the gold he had collected and was about to collect from Shri V. Manoharan were not duty paid.

7. In their voluntary statements recorded after their interception the Applicants Shri V. Manoharan and to Shri D. Veerappan also revealed that they were offered a monetary consideration to carry the gold to India to which they agreed. There is no doubt about the fact that the Applicants has contravened the provisions of Customs Act, 1962. Therefore, the seized gold jewelry are liable for absolute confiscation under provisions of the Customs Act, 1962. It appears that the entire *modus operandi* was attempted to avoid detection and to dodge the Customs authorities and smuggle out the gold jewelry without payment of appropriate duty. This clearly indicates *mens rea*, the Applicant had no intention of declaring the gold to the authorities and if it

was not intercepted before the exit, the Applicant would have succeeded in taking out the gold 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. No. 29 to 31/2014 dated 19.08.2014.

9. Revision Application is dismissed.

10. So, ordered.

Ashok Kumar Mehta
16.4.18

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

ORDER No. ¹⁸⁴⁻¹⁸⁶ /2018-CUS (SZ) /ASRA/MUMBAI.

DATED 16.04.2018.

To,

Shri V. Manoharan,
Shri D. Veerappan
Shri S. Raman
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai 600 001.

True Copy Attested

Sankarsan Munda
19/4/18
SANKARSAN MUNDA
Asstt. Commissioner of Customs & C. Ex.

Copy to:

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

