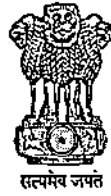


REGISTERED
SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/183/B/14-RA/184

Date of Issue 01.05.2018

ORDER NO. 22/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 27.04.2018 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 Ansari Ameerian

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. 196/2014 dated 11.02.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

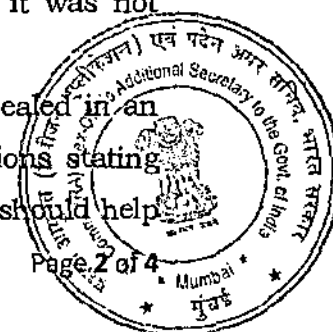
This revision application has been filed by Shri Ansari Ameerian against the order no C.Cus No. 196/2014 dated 11.02.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, a Sri Lankan National had arrived at the Chennai Airport on 06.06.2013. Examination of his person resulted in recovery of one gold chain weighing 30 gms valued at Rs. 76,148/- (Seventy Six thousand One hundred and Forty eight) and one Avalon VT 737 SP Amplifier (Re-Furbished) valued at 75,000/- (Seventy Five thousand). As the Applicant had not declared the impugned gold and the Amplifier and was a repeat offender the original Adjudicating Authority vide his order 658/ Batch D dated 06.06.2013 confiscated both the gold chain and the Amplifier, but allowed redemption of the goods on payment of a redemption fine of Rs. 75,100/-. A Penalty of Rs. 20,000/- 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. 196/2014 dated 11.02.2014 rejected the Appeal.

4. The applicant has filed this Revision Application inter alia on the grounds that,
 4.2 The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; the goods must prohibited before export or import simply because of non-declaration it cannot become prohibited; that as the jewelry was worn by the Applicant and the same was visible and he showed it to the officer therefore the question of declaration does not arise; There is there is no specific allegation that the Applicant had passed through the Green Channel; He was at the red channel all along under the control of the officers; He had brought a refurbished Amplifier and yet no free allowance was given to him; The Hon'ble Supreme Court has observed that the main object is to collect duty and not punish the persons; that the worn gold chain should have been allowed for re-export without redemption fine and penalty, But the officers proceeded to detain the jewelry because it was not declared;

4.2 The Applicant further pleaded that as the gold was not concealed in an ingenious manner. 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



2

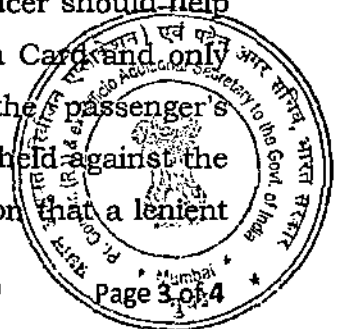
the passenger to fill in the declaration card; The Hon'ble Supreme Court has in the case of Om Prakash vs Union of India states that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions.

4.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing gold for redemption under section 125 of the Customs Act, 1962 and prayed for reduction of redemption fine and reduction of personal penalty for re-export.

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 re-export of gold was allowed on reduced redemption fine and penalty. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. The Applicant is a repeat offender. The Applicant is a frequent traveller and well aware of the rules. A written declaration of gold and the Amplifier was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and had he not been intercepted he would have gone without paying the requisite duty, under the circumstances confiscation of the goods is justified.

7. However, the facts of the case state that the Applicant was not intercepted while trying to exit the Green Channel. The gold chain was worn by the Applicant, hence, there was no concealment of the goods. Government observes that the Applicant is a repeat offender, however in this case he was wearing the gold chain and therefore there was no ingenious concealment. The ownership of the gold is not disputed. The Amplifier as mentioned by the Officer in the Order in Original was refurbished and yet no free allowance was given to the Applicant. The facts of the case state that the Applicant was intercepted before an attempt was made to exit through the Green Channel, and the confiscation of the goods is influenced by the Applicants previous offences. The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record to the oral declaration on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant. In view of the above facts, the Government is of the opinion that a lenient



view can be taken in the matter. The impugned Order in Appeal therefore needs to be modified with slight reduction in the redemption fine and penalty for re-export.

8. Taking into consideration the foregoing discussion, the redemption fine in lieu of confiscation of the gold and Amplifier totally valued at Rs. 1,51,148/- (One lac Fifty one thousand One hundred and Forty Eight) is reduced from Rs. 75,100/- (Rupees Seventy Five thousand One hundred) to Rs. 60,000/- (Rupees Sixty Thousand) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 20,000/- (Rupees Twenty thousand) to Rs. 15,000/- (Rupees Fifteen thousand) under section 112(a) of the Customs Act,1962.

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

10. So, ordered.

(Signature)
27.4.18

(ASHOK KUMAR MEHTA)

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

ORDER No. 22/2018-CUS (SZ) /ASRA/MUMBAI

DATED 27.04.2018

To,

Shri Ansari Ameeriyan

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

True Copy Attested

(Signature)
15/5/18

SANKARSAN MUNDA
Asstt. Commissioner of Customs & C. 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.

