

**REGISTERED
SPEED POST**

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.373/262 & 263/B/14-RA

Date of Issue

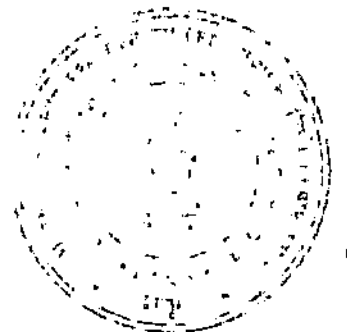
31.07.2020

ORDER NO. ²⁵⁻²⁶ /2020-CUS (SZ)/ASRA/MUMBAI DATED 21.07.2020 OF THE
GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL
COMMISSIONER- & EX-OFFICIO ADDITIONAL SECRETARY- TO THE
GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT,
1962.

Applicant : Shri M. Maheshwaran

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal C.CUS No. 972
& 973/2014 dated 16.06.2014 passed by the Commissioner of
Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri M. Maheshwaran (herein after referred to as the Applicant) against the order in appeal Order-in-Appeal C.CUS No. 972 & 973/2014 dated 16.06.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the Applicant, arrived from Singapore on 13.03.2012 and was intercepted while he was crossing through the Green channel. Examination of his person led to the recovery of assorted gold jewelry weighing 207.59 grams valued at Rs. 5,45,131/- (Rupees Five lacsForty five thousand one hundred and Thirty one). The gold was recovered from a rexin pouch kept in the waist of his trousers.

3. The Original Adjudicating Authority vide Order-In-Original No. 750/07.11.2013 ordered confiscation of the impugned gold under Section 111 (d) (l) (m) and (o) of the Customs Act,1962, but allowed re-export of the same on payment of a fine of Rs. 2,75,000/- (Rupees Two lacs Seventy five thousand and imposed penalty of Rs. 55,000/- (Rupees Fifty Five thousand) under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the applicant as well as the department filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.CUS No. 972 & 973/2014 dated 16.06.2014 set aside the order in original and ordered absolute confiscation of the gold and rejected the appeal of the applicant.

5. Aggrieved with the above order the Applicant, has filed this revision application inter alia on the grounds that;

5.1 The order of the appellate authority is contrary to the law and probabilities of the case; The applicant submits that he had not attempted to import any of the goods into India in contravention of any rules; The Commissioner purportedly relied on extraneous considerations and has acted in gross abuse of his power, without application of mind; There was no concealment of the gold; The said goods were shown to the authorities without hesitation or concealment; as he had declared the gold to the authorities

under section 77 of the Customs Act,1962 he has requested re-export as per Section 180 of the Customs Act,1962; As per the judgement of Allahabad High Court 27 STC 337 suspicion however strong cannot take the place of positive proof;

He is an eligible passenger to import gold having worked in Singapore and stayed abroad for more than six months; It is not correct to say that the



Applicant acted as a carrier as he works in Singapore as an electrician and has a work permit issued by the Singapore Government; No reliance can be taken of the statement taken as it was retracted immediately before the Magistrate; The order in original has given its findings that the applicant is employed in Singapore and therefore is not a carrier and has no previous offences registered against him; Section 125 also allows goods to be returned to the person from whose possession the goods have been seized; It is settled by Division bench of Calcutta High Court in the case of Commissioner of Customs Vs Umashankar Varma reported in 2000 (120) ELT 322 (Cal) holding that when goods are not prohibited the Customs authorities have no other option but to allow grant of option to the assessee; Irrelevant aspects have been taken into consideration and relevant aspects have been disregarded;

5.2 The Applicant submitted case laws in favor of his case and prayed for setting aside the Order in Appeal and allow the gold for re-export or pass further or other orders as deem fit and proper in the facts and circumstances of the case.

6. A personal hearing in the case was held in the case on 21.11.2019, the Advocate for the Applicant Shri A. K Jayaraj, Advocate, attended the hearing, he re-iterated the submissions filed in Revision Application and submitted that the Applicant had worked in Singapore as an electrician since 2013. Applicant has a work permit and is not a carrier. Invoices of the gold were given and there was no concealment. Nobody from the Respondent side attended the said hearing.

7. The facts of the case reveal that the Applicant had brought a gold jewelry weighing 207.59grams in a rexin pouch recovered from his waist. He was intercepted in the Green Channel, and as declaration was not made as required under section 77 of the Customs Act, 1962 the gold is definitely liable for confiscation and is upheld.

8. It is observed that the impugned gold was allowed for redemption by the Original Authority but was held liable for absolute confiscation by the Appellate authority. The issue before the Government in this case is whether the gold is liable for absolute confiscation. Government observes that the Appellate order has justified absolute confiscation on the grounds that the Applicant acted as a carrier and was not the owner of the gold. On going through the case records, it appears that the facts of the case have not been properly appreciated. In his statement recorded on 13.03.2012 by the Customs officers, the Applicant states that "*while coming back to India, some of his native place friends namely Selvarasu, R. Venkatesh, P. Mudali, M. Jayaraman, M. Satheeskumar, V. Reddy* who were working in Singapore met him and each of them handed over the small quantity with a request to hand over the same in their respective houses



at his native place". There is no allegation that he received any monetary consideration for carrying the gold. In fact in his reply to the SCN vide letter dated 01.08.2012, the Applicant clearly admits that he did not receive any consideration nor did he demand any for carrying the goods. The impugned gold totally weighing 207.59 grams was sent by six persons i.e. on average 40 grams person. The above facts when properly deciphered, reveal that this was more of an attempt to carry remittances back home in gold form, to the families of the senders rather than a concerted attempt to smuggle gold into India using a carrier. The quantity of the gold involved, per person, also reveals that it is not an operation by a smuggling cartel to smuggle gold. The order in original also states that the Applicant had been gainfully employed abroad and has no previous offences registered against him. In the present liberalized regime gold is restricted not prohibited and the gold was not ingeniously concealed. Section 125 of the Customs Act, 1962 also allows the gold to be released to the person from whose possession the gold was recovered. Thus, the Government concludes that the absolute confiscation of the gold is an order in excess and needs to be set aside.

9. In view of the above facts the Government is of the opinion that the gold is liable to be allowed for redemption on payment of fine and penalty. The Applicant has requested for release of the gold for re-export and the Government, accepts the plea. The impugned Order in Appeal is therefore set aside. The Order in original is upheld and the gold is allowed for re-export.

10. Revision application is allowed on above terms.

11. So, ordered.

(SEEMA ARORA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

25-26
ORDER No. /2020-CUS (SZ) /ASRA/MUMBAI DATED 21.04.2020

To,

1. Shri M. Maheshwaran, c/o Shri Manickam, Perumal Koil Street, S. Ogaiyur Village, & Post, Kallakuruchi Taluk, Villpuram District, Tamilnadu 606 204.

Copy to:

The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.

3. M/s A. K. Jayaraj, Advocate, Old No. 2, New No. 3, Thambusamy Road, 1st Floor, Chennai 600 010.

4. P.S. to AS (RA), Mumbai.

5. Guard File.

6. Spare Copy.

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)