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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. 373/117/B/14-RA / 2018

Date of Issue 07/05/2018.

ORDER NO. 252/2018-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 Mohamed Imthiyas

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. 361/2014 dated 05.03.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Mohamed Imthiyas (herein after referred to as the Applicant) against the order no C. Cus No. 361/2014 dated 05.03.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, a Sri Lankan citizen arrived at the Chennai Airport on 06.10.2013 and examination of his person and baggage resulted in the recovery of one Gold chain weighing 109.3 gms valued at Rs.2,98,081/- (Rupees Two lacs Ninety eight thousand and eighty one) and 22 nos of Indian currency notes of Rs. 1000 denomination.

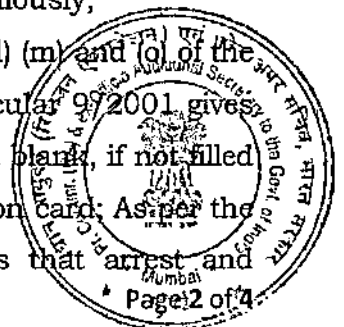
3. After due process of the law vide Order-In-Original No. 1172 /2013 Batch D dated 06.10.2013 the Original Adjudicating Authority absolutely confiscated the gold chain and the Indian currency under section 111 (d) and (l) of the Customs Act, 1962 read with section 3(3) Foreign Trade (D & R) Act, 1992. A penalty of Rs. 32,000/- was also imposed under Section 112 (a) of the Customs Act,1962.

4. 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 361/2014 dated 05.03.2014 rejected the Appeal.

5. The applicant has filed this Revision Application interalia on the grounds that;

5.1 the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The Applicant was intercepted at the baggage scan area whereas the officers have registered a case as if he had attempted to smuggle the gold; The gold chain was worn by the Applicant, the CCTV footage if produced can reveal the truth; he was all along under the control influence of the officers and had not passed through the Green Channel; He had declared the gold chain in the declaration card; As he was wearing the chain and had orally declared the gold items and also voluntarily showed it to the officers, having seen the same the question of declaration does not arise; He comes to India occasionally and was not aware of the procedure; The eligibility question does not arise for a foreigner; The gold was not concealed ingeniously;

5.2 The Applicant further pleaded that the section 111 (d) (l) (m) and (o) of the Customs Act, 1962 are not attracted in this case; CBEC circular 99/2001 gives specific directions stating that a declaration should not be left blank, if not filled in the Officer should help the passenger to fill in the declaration card; As per the circular 394/71/97-CUS (AS) GOI dated 22.06.1999 states that arrest and



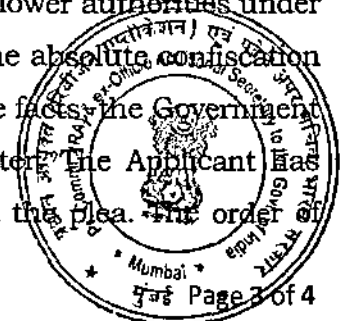
prosecution need not be considered in routine in respect of foreign nationals and NRIs who have inadvertently not declared; Even assuming without admitting that he did not declare the gold it is only a technical fault; the absolute confiscation of the gold and Indian currency and imposition of Rs. 32,000/- penalty is high and unreasonable.

5.3 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 permission to re-export the gold on without payment or payment of nominal redemption fine and reduced personal penalty and release the Indian currency.

6. 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.

7. The Government has gone through the facts of the case. The Applicant is a frequent traveller. It is a fact that the gold chain was not declared by the Applicant as required under Section 77 of the Customs Act, 1962, and under the circumstances confiscation of the gold is justified.

7. However, the facts of the case state that the Applicant was intercepted before he attempted to cross the Green Channel. The gold is claimed by the Applicant and there is no other claimant. The gold chain was worn by the Applicant and was not ingeniously concealed. There are no previous offences registered against the Applicant. 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 moreso because he is a foreigner. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. The absolute confiscation of the gold is therefore harsh and unjustified. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The Applicant has pleaded for re-export and the Government is inclined to accept the plea. The order of



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absolute confiscation of the gold in the impugned Order in Appeal therefore needs to be modified and the confiscated gold is liable to be allowed for re-export on payment of redemption fine and penalty.

8. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold chain for re-export in lieu of fine. The gold jewelry weighing 109.3 gms valued at Rs.2,98,081/- (Rupees Two lacs Ninety eight thousand and eighty one) is ordered to be redeemed for re-export on payment of redemption fine of Rs 1,25,000/- (Rupees One lac Twenty Five 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. 32,000/- (Rupees Thirty two thousand) to Rs.25,000/- (Rupees Twenty Five thousand) under section 112(a) of the Customs Act,1962.

9. The import of Indian currency is prohibited. Therefore the Government holds that the absolute confiscation of the currency is appropriate, and does not interfere with the Order in Appeal in this regard.

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

10. So, ordered.

(Handwritten Signature)

27.04.2018

(ASHOK KUMAR MEHTA)

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

ORDER No. 352/2018-CUS (SZ) /ASRA/MUMBAI

DATED 27.04.2018

To,

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

True Copy Attested

(Handwritten Signature)

SANKARSAN MUNDA

Asstt. Commissioner of Custom & C. Ex.

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. The Commissioner of Customs (Appeals), Custom House, Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

