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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. 373/189/B/14-RA / 76

Date of Issue 07/05/18

ORDER NO. 257/2018-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 Senthil

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. 461/2014 dated 14.03.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Senthil against the order no C.Cus No. 461/2014 dated 14.03.2014 passed by the Commissioner of Customs (Appeals), Chennai.

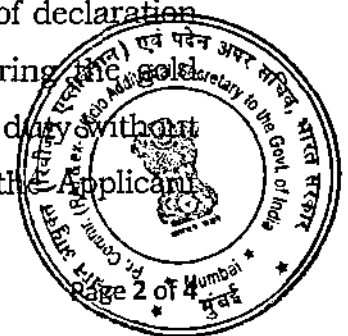
2. Briefly stated facts of the case are that the applicant had arrived at the Chennai Airport on 13.06.2013. Examination of his baggage resulted in recovery of one gold necklace with earrings weighing 52 gms valued at Rs. 1,35,690/- (One lac Thirty five thousand Six hundred and Ninety).

3. The Original Adjudicating Authority vide his order 693 Batch D dated 13.06.2013 confiscated the gold jewelry, but allowed redemption of the goods on payment of a redemption fine of Rs. 68,000/-. A Penalty of Rs. 14,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant.

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. 461/2014 dated 14.03.2014 rejected the Appeal.

5. The applicant has filed this Revision Application inter alia on the grounds that,

5.2 The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The goods must be prohibited before import or export simply because the goods were not declared it does not become prohibited; He was at the red channel all along under the control of the officers; The Superintendent makes no allegation that he was trying to exit the Green channel; The gold jewelry was worn by the Applicant, having worn the same it was visible and as such and he showed it to the officer therefore the question of declaration does not arise; Even assuming without admitting that wearing the gold jewelry was an offence it could have been released on payment of duty without redemption fine and penalty; as the jewelry was worn by the Applicant and the same was visible



5.2 The Applicant further pleaded that CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete; 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;

5.3 The Applicant further pleaded that as The The Revision Applicant cited various assorted judgments and boards policies in support of re-export of the gold and prayed for reduction of redemption fine and reduction of personal penalty for re-export.

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

7. The Government has gone through the facts of the case. A written declaration of gold 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.

8. However, the facts of the case state that the Applicant was not intercepted while trying to exit the Green Channel. The gold jewelry was worn by the Applicant, hence, there was no ingenious concealment of the goods. The ownership of the gold is not disputed. The Applicant does not have any history of 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. 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



Signature

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

9. Taking into consideration the foregoing discussion, the redemption fine in lieu of confiscation of the gold 52 gms valued at Rs. 1,35,690/- (One lac Thirty five thousand Six hundred and Ninety) is reduced from Rs. 68,000/- (Rupees Sixty thousand) to Rs. 50,000/- (Rupees Fifty) 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. 14,000/- (Rupees Fourteen thousand) to Rs. 10,000/- (Rupees Ten thousand) under section 112(a) of the Customs Act, 1962.

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

11. So, ordered.

(Signature)
27.4.18

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

ORDER No. 257/2018-CUS (SZ) /ASRA/MUMBAI

DATED 27.04.2018

To,

Shri Senthil

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

True Copy Attested

(Signature)
27/4/18

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, Rajaji Salai Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

