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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. 373/131 /B/14-RA/1092

Date of Issue 07.02.2018

ORDER NO. 25/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 31.01.2018 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 Fasran Mulaffer.

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus No. 265-268/2014 dated 20.02.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri. Faran Mulaffer (herein referred to as Applicant) against the order no 265-268/2014 dated 20.02.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case is that the applicant, a Sri Lankan national, arrived at the Chennai Airport on 11.09.2013. On arrival the Applicant was intercepted at the Green Channel while attempting to exit without baggage declarations at the Red Channel. Examination of his baggage resulted in the recovery of gold weighing 99 gms of crude gold valued at Rs. 2,58,332/-. As the applicant was a frequent traveler and not an eligible passenger to bring gold on concessional rate of duty, and as a proper declaration with regard to import of gold was also not made by him. The Assistant Commissioner of Customs, Airport vide Order-In-Original No. 716 Batch D dated 20.06.2013 ordered absolute confiscation of the impugned goods under Section 111 (d), (f), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 26,000/- under Section 112 (a) of the Customs Act, 1962.

3. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus No. 265-268/2014 dated 20.02.2014 rejected the appeal of the applicant.

4. The applicant has filed this Revision Application interalia on the following grounds;

4.1. That the order of the appellate authority is against law, weight of evidence and circumstances and probabilities of the case.

4.2. That he did not admittedly pass through the green channel. He was at the red channel all along at the arrival hall of Airport and was under the control of officers.

4.3 That the seized gold bangle belonged to his wife and she had worn it for more than several months. In fact his wife showed it to the officer, having seen the gold bangle the question of declaration does not arise.



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Secondly, the worn bangle was visible to the naked eye and therefore the question of declaration or misdeclaration does not arise.

4.4 That he being a foreign citizen and therefore eligibility notification 03/2012 dated 16.01.2012 for import of gold on concessional rate does not apply to him.

4.5 That the absolute confiscation of the gold and imposed personal penalty was high and unreasonable .

The Revision Applicant has cited various assorted judgments in support of his case, and prays and permit him to re-export the gold bit on payment of nominal redemption fine and also reduce the personal penalty.

5. A personal hearing in the case was held on 04.12.2017, the Advocate for the respondent Shri Palanikumar requested for an adjournment due to a medical emergency. The personal hearing was rescheduled on 29.01.2018, which was attended by the Shri Palanikumar. The Advocate, reiterated the submissions filed Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. The Applicant is a foreign national and a frequent traveler to India. However every tourist has to comply with the laws prevailing in the country visited. If a tourist is caught circumventing the law, he must face the consequences. It is a fact that the gold was not declared by the passenger as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the gold is justified. .

7. However, The Applicant being a foreigner, the eligibility notification to import gold is not applicable to him. The goods were not in commercial quantity and from the facts of the case it appears that the Applicant's wife was wearing the gold when he was intercepted and it was not indigenously concealed. The facts of the case also state that the Applicant had not cleared the Green Channel. The reason for frequent visits has also not been explored. With



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regards to the declaration, the CBEC Circular 09/2001 gives specific directions to the Customs officer as follows, *"It may be ensured that every passenger reporting at Red Channel fill up a Disembarkation Card clearly mentioning therein the quantity and value of goods that he has brought, and hand over the Customs portion of the card to the officer on duty at the red Channel. In case the same is incomplete/not filled up, the proper Customs officer should help record the O.D of the passenger 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, more so because he is a foreigner. Considering all factors, the Government is of the opinion that the absolute confiscation of the impugned gold is harsh and not justified.

8. As the applicant has requested for export of the confiscated gold for re-export, Government is inclined to accept the request. In view of the above mentioned observations, the Government also finds that a lenient view can be taken while imposing redemption fine and penalty upon the applicant. 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 impugned Order in Appeal therefore needs to be modified and the absolute confiscation in respect of the impugned gold needs to be modified and confiscated gold may be allowed for re-export.

9. Taking into consideration the foregoing discussion, Government modifies the order of absolute confiscation of the impugned gold. Government allows redemption of the confiscated gold for re-export in lieu of fine. The confiscation of the gold totally weighing 99 gms, valued at Rs. 2,58,332/- (Rupees Two lacs, Fifty Eight thousand and three hundred and thirty two) is ordered to be redeemed for re-export on redemption fine of Rs.50,000/- (Rupees Fifty Thousand) under section 125 of the Customs Act, 1962. Government also observes that facts of the case justify slight reduction in penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs.26,000/- (Rupees Twenty six thousand) to Rs. 15,000/- (Rupees fifteen thousand) under section 112(a) of the Customs Act, 1962.



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10. The impugned Order in Appeal 265-268/2014 dated 20.02.2014 is modified as detailed above. Revision Application is partly allowed.

11. So, ordered.

(Signature)
21.01.2018

(ASHOK KUMAR MEHTA)

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

ORDER No. 25/2018-CUS (SZ) /ASRA/mumbai

DATED 31.01.2018

To,

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

True Copy Attested

(Signature)
21/1/18

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.

