



सत्यमेव जयते

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No. 373/73/B/14-RA | ५  
१०/११

Date of Issue ०८.०५.२०१८

ORDER NO. २६८/2018-CUS (SZ) / ASRA / MUMBAI/ DATED २७.०४.२०१८ 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 Silmy Mohamed

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. 193-194/2014 dated 10.02.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri. Silmy Mohamed ( herein referred to as Applicant) against the Order in Appeal C. Cus. no 193 -194/2014 dated 10.02.2014 passed by the Commissioner of Customs (Appeals), Chennai.

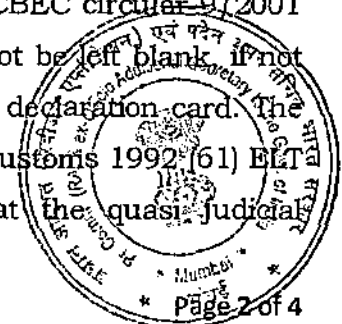
2. Briefly stated the facts of the case is that the applicant, a Sri Lankan national, had arrived at the Chennai Airport on 24.08.2013. he was intercepted at the Green channel without declaration and examination of his baggage resulted in the recovery of gold coins coated with silver totally weighing 155 grams valued at Rs. 4,37,584/- ( Rupees Four lacs thirty seven thousand Five hundred and Eighty four). The Original Adjudicating Authority vide Order-In-Original No. 984/2013 Batch C dated 24.08.2013 ordered for absolute confiscation of the impugned goods under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 44,000/- under Section 112 (a) of the Customs Act.

3. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus No. 193 -194/2014 dated 10.02.2014 rejected the appeal of the applicant.

4. The applicant has filed this revision application on the grounds that ;

4.1. That the order of the appellate authority is against law, weight of evidence and circumstances and probabilities of the case; he did not admittedly pass through the green channel. He was at the red channel all along; Being a foreign national he was not aware of the law; He had made an oral declaration and showed the gold to the officers and having shown the gold the question of declaration does not arise; Being aware that the Applicant is a foreign national the gold coins should have been allowed for re-export;

4.2 The Applicant further pleaded that; the Hon'ble Supreme Court has in the case of Om Prakash vs Union of India stated that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions; 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; CBEC circular 9/2001 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. The Apex court in the case of Hargovind Dash vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has pronounced that the quasi-judicial



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authorities should use the discretionary powers in a judicious and not an arbitrary manner.

4.3 The Revision Applicant cited various assorted judgments in support of re-export even when the gold was concealed and prayed for permission to re-export the gold on payment of nominal redemption fine and reduced personal penalty.

5. A personal hearing in the case was held on 07.03.2018, the Advocate for the respondent Shri Palanikumar re-iterated the submissions filed in 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. 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 same were 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. The Government has gone through the case records. The Applicant is a frequent traveller and therefore well aware of Customs laws. The gold coins were coated in silver kept in his checked in baggage. There is absolutely no doubt that the coins were coated with silver with an intention to hoodwink the Customs Authorities into believing that the coins were made of silver. The aspect of allowing the gold for re-export can be considered when imports have been made in a legal manner. In this case the Applicant has blatantly tried to smuggle the gold into India in contravention of the provisions of the Customs, 1962. Government also notes that the gold coins were not declared by the Applicant as required under Section 77 of the Customs Act, 1962. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and that the Applicant had no intention of declaring the gold to the authorities and if he was not intercepted before the exit, the Applicant would have taken out the gold coins (silver coated) without payment of customs duty. The above acts have therefore rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. Therefore, the government holds that the original adjudicating authority has rightly confiscated the gold absolutely and imposed a penalty of Rs. 41,000/-.



also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.

8. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C. Cus. No. 193 & 194/2014 dated 10.02.2014 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

9. Revision Application is dismissed.

10. So, ordered.

(ASHOK KUMAR MEHTA)

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

ORDER No. 268/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 27.04.2018

To,

**True Copy Attested**

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

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.

