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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

F.No. 373/116/B/14-RA/1093

Date of Issue 07-02-2018

ORDER NO. 26/2018-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 Vinothkumar.

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. 1771/2013 dated 04.12.2013 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri. Vinothkumar (herein referred to as Applicant) against the order no 1771/2013 dated 04.12.2013 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 08.04.2013. On arrival the Applicant was intercepted at the Green Channel while attempting to exit and search of his person resulted in the recovery of gold bracelet weighing 36 gms valued at Rs. 1,02,970/-. The Assistant Commissioner of Customs, Airport vide Order-In-Original No. 385 dated 08.04.2013 ordered 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. But allowed redemption for re-export on payment of fine of Rs 52,000/- and imposed penalty of Rs. 11,000/- 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. 1771/2013 dated 04.12.2013 rejected the appeal of the applicant.

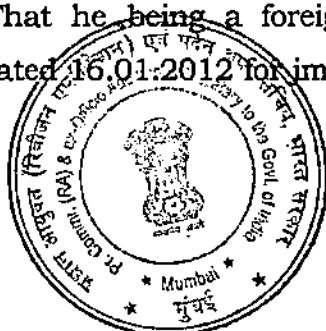
4. The applicant has filed this Revision Application interalia on the following grounds;

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. When he was waiting to collect his checked in baggage. The officers of the Customs asked him whether he was having any gold. He replied that he was wearing a gold bracelet, which he removed and handed it over to them.

4.3 That the seized gold bangle was worn by him for several years. When questioned he showed it to the officer, having seen the gold bangle the question of declaration does not arise. Secondly, the worn bangle was visible to the naked eye and therefore the question of declaration or misdeclaration also 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 he had declared the gold chain in the declaration card. Even assuming without admitting he had not declared the gold before the officers is a technical fault and it can be pardonable. Secondly, CBEC Circular 09/2001 gives specific directions to the Customs officer that the declaration should not be blank, if not filled in by the passenger the officer will help them to fill the declaration card.

The Revision Applicant has cited various assorted judgments in support of his case, and prays that the 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, re-iterated the submissions filed Revision Application and cited the decisions of GOI/Tribunals where re-export of gold was allowed on reduced terms. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. 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 was wearing the gold bracelet 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 exit and was intercepted before the exit. The reason for frequent visits has also not been explored. With 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 this infraction appears to be unintentional and hence should be seen with a lenient eye while imposing redemption fine and penalty upon the applicant. The impugned Order in Appeal therefore needs to be modified to that extent.

7. Government, taking into consideration foregoing discussion reduces the redemption fine imposed from Rs.52,000/- (Rupees Fifty two thousand ) to Rs. 30,000/- (Rupees Thirty Thousand) and the personal penalty is also reduced from Rs. 11,000/- (Rupees Eleven Thousand) to Rs.5,000/- (Rupees Five thousand). The impugned order stands modified to the above extent. Application is partly allowed on the above terms.

8. The impugned Order in Appeal 1771/2013 dated 04.12.2013 is modified as detailed above. Revision application thus succeeds in above terms.

9. So, ordered.

*(Signature)*  
21.1.18

(ASHOK KUMAR MEHTA)

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

ORDER No. 26/2018-CUS (SZ) /ASRA/MUMBAI

DATED 31.01.2018

To,

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

**True Copy Attested**

*(Signature)*  
21/1/18

SANKARAN 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.

