

REGISTERED  
SPEED POST

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.373/249/B/14-RA/3231

Date of Issue 31.07.2020

ORDER NO 27/2020-CUS (SZ)/ASRA/MUMBAI DATED 21.04.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Nazurudeen

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.CUS No. 832/2014 dated 08.05.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Nazurudeen (herein after referred to as the Applicant) against the order in appeal Order-in-Appeal C.CUS No. 832/2014 dated 08.05.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the Applicant, arrived from Dubai on 16.07.2013 and was intercepted at the Green Channel. Examination of his person led to the recovery of a gold chain weighing 78.4 grams valued at Rs. 1,97,317/- ( Rupees One lac Ninety Seven thousand Three hundred and Seventeen ).

3. The Original Adjudicating Authority vide Order-In-Original No. 837/2013-Batch C dated 16.07.2013 ordered absolute confiscation of the impugned gold under Section 111 (d) (l) (m) and (o) of the Customs Act,1962, and imposed penalty of Rs. 20,000/- ( Rupees Twenty thousand ) under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.CUS No. 832/2014 dated 08.05.2014 rejected the appeal of the applicant.

5. Aggrieved with the above order the Applicant, has filed this revision application interalia on the grounds that;

5.1 The order of the appellate authority is contrary to the law and probabilities of the case; The applicant submits that he had declared the the gold chain and there was no misdeclaration or non-declaration; No reliance can be taken of the statement taken under threat or coercion; He is an eligible passenger to import gold having worked in Singapore and stayed abroad for more than eight months; There was no concealment of the gold in baggage; As he had declared the gold to the authorities under section 77 of the Customs Act,1962, section 80 comes into play; It is not known on what basis the Customs authorities have concluded that the above goods are sensitive in a liberalized era; As per the judgement of Allahabad High Court 27 STC 337 and Supreme Court reported in 42 STC



348 suspicion however strong cannot take the place of positive proof; The Commissioner himself had accepted the fact that the Applicant is an eligible passenger, therefore absolute confiscation is wrong; The impugned order in original itself states that the Applicant is not an habitual offender. The High Court of Calcutta in the case of Commissioner of Customs Vs Uma Shankar Verma [2000 (120) ELT 322 (Cal)] has decided that when goods are not prohibited then Customs authorities have no option but to allow the assessee to pay the fine in lieu of confiscation; The finding that the impugned gold was brought for somebody else is totally baseless; The penalty of Rs. 10,000/- is arbitrary and unreasonable. The Applicant had not attempted to import any of the goods in contravention of any rules and regulations; As per section 125 (1) the Adjudicating Officer is under a mandatory duty to give option to pay fine in lieu of confiscation; There is no evidence to show that the Applicant had acted in deliberate defiance of the law in conscious disregard of their obligations.

5.2 The Applicant submitted case laws in favor of his case and prayed for setting aside the Order in Appeal of absolute confiscation and allow the gold for re-export or pass further or other orders as deem fit and proper in the facts and circumstances of the case.

6. A personal hearing in the case was held in the case on 21.11.2019, the Advocate for the Applicant Shri A. K Jayaraj, Advocate, attended the hearing, he re-iterated the submissions filed in Revision Application and pleaded that the Applicant had worn the said gold chain and has a permit to work in Dubai.

7. The facts of the case reveal that the Applicant had brought a gold chain jewelry weighing 78.4 grams totally valued at Rs. 1,97,317/-. He was intercepted in the Green Channel, and as declaration was not made as required under section 77 of the Customs Act, 1962 the confiscation of the gold is upheld.

8. However, the Adjudication order states that the gold chain was recovered from the applicants person and the Applicant in his revision application avers that he had worn the gold. It is therefore safely concluded that the gold chain not ingeniously concealed. The order in original mentions that there is no



known past history of such cases. Import of gold is restricted not prohibited. The Applicant is an NRI working in Dubai and having worked abroad for eight months is an eligible passenger to import gold on concessional customs duty. The quantity of gold under import is small. The Government therefore observes that absolute confiscation is harsh and unjustified. The penalty of Rs. 20,000/- on the gold is also on the higher side. The Applicant has requested for release of the gold for re-export and the Government, noting his NRI status is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

10. Accordingly, the absolute confiscation of the gold is set aside. Re-export of the impugned gold is allowed on payment of a redemption fine of Rs. 20,000/- (Rupees Twenty Thousand Only). The penalty imposed under section 112 (a) is also reduced to Rs. 10,000/- ( Rupees Ten Thousand Only).

10. Revision application is allowed on above terms.

11. So, ordered.

( SEEMA ARORA )  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. <sup>27</sup>/2020-CUS (SZ) /ASRA/MUMBAI DATED 21.04.2020

To,

1. Shri Nazurudeen, S/o Abdul Majeed, 3/271 Akbar Street, Arangakudi Tranqubar, Nagar Dist, Tamil Nadu.
2. The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.
3. M/s A. K. Jayaraj, Advocate, Old No. 2, New No. 3, Thambusamy Road, 1st Floor, Chennai 600 010.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

**ATTESTED**

B. LOKANATHA REDDY  
Deputy Commissioner (R.A.)





सत्यमेव जयते

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. 373/104/B/14-RA / 3771

Date of Issue 31.08.2020

ORDER NO. 31/2020 - CUS (SZ)/ASRA/MUMBAI DATED 21.01.2020 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Bala Subramaniam

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.CUS No. 70/2014 dated 24.01.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Bala Subramaniam (herein referred to as Applicant) against the order C.CUS No. 70/2014 dated 24.01.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Bala Subramaniam at the Anna International Airport, Chennai on 15.07.2013 at the green channel. He was found carrying three gold chains totally weighing 112 grams valued at Rs. 2,71,718/- ( Rupees Two lacs Seventy One thousand Seven hundred and Eighteen ).

3. After due process of the law vide Order-In-Original No. 823/ Batch C dated 15.07.2013 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 27,000/- (Rupees Twenty Seven thousand) 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), The Commissioner (Appeals) vide his order C. CUS No. 70/2014 dated 24.01.2014 rejected the appeal of the Applicant.

5. Aggrieved with the above order the Applicant has filed this revision application inter alia on the grounds that;

5.1 The Order of the Commissioner (Appeals) is against law, weight of evidence and probabilities of the case; The Authorities have wrongly come to the conclusion that he has stayed abroad for 156 days, infact the Applicant has stayed abroad for 321 days, and his short visit to India did not exceed 30 days making him an eligible passenger; An eligible passenger is entitled to import 1kg gold; The gold chains were worn by the Applicant on arrival and there was no mis-declaration; Gold ornaments are not prohibited for import and therefore absolute confiscation is not in



accordance with the law; Being an eligible passenger under Notfn. 31/2003 and the option for redemption in lieu of confiscation under section 125 of the Customs Act, 1962 is mandatory; In any event the Revision authority may also permit Re-export;

5.2 The Revision Applicant cited case laws in support of their contention and prayed that the impugned Order deserves to be set aside with consequential relief.

6. In view of the above, personal hearings in the case were scheduled on 05.06.2018, 29.08.2019 and 01.10.2019. Nobody attended the hearing on behalf of the Applicant or the Department. The case is therefore being decided ex parte on merits.

#### FINDINGS AND ORDER

7. As the gold was not declared by the Applicant as mandated under section 77 of the Customs, Act, 1962, the confiscation of the gold is justified. In the current liberalized scenario, gold is no longer prohibited, it is a restricted item and therefore absolute confiscation of the gold cannot be justified. Government also observes that there are no allegations that the gold was ingeniously concealed, and the Applicant claims he was wearing the gold on arrival at the Airport. The Order in original also avers that the Applicant has no recorded previous offences. Though the Respondent may have carried the same on behalf of someone else, considering other facts it would be an exaggeration to term the applicant as a carrier as the quantity of the gold under import is small. Further, the Applicant avers that he is an "Eligible passenger" in terms of Notfn 31/2003, having stayed abroad for 321 days and is eligible to import gold on concessional rate of duty. The Tribunal, Mumbai in the case of V. P. Hameed Vs Collector of Customs, Bombay reported in 1994 (73) ELT 425 Tri.Bom has upheld the confiscation of the undeclared gold and allowed its release on redemption fine in view of liberalized policy. The Apex court in the case of Hargovind Das K. Joshi v/s Collector of Customs reported in 1992 (61) E.L.T. 172 (S.C.), has pronounced that a quasi judicial authority must exercise discretionary powers in judicial and not arbitrary manner and remanded the case back for consideration under section 125(1) of the Customs Act, 1962. The section also allows the gold to be released to the person from whose possession the goods have been recovered, if



the actual owner of gold is not known. Under the circumstances, absolute confiscation in the case cannot be justified and considering the overall circumstances of the case in the wake of liberalized policy of the Government, the Appellate order is liable to be set aside.

9. In view of the above facts, Government sets aside the Appellate order and allows the gold for re-export on payment of Redemption fine of Rs. 50,000/- ( Rupees Fifty thousand). There are no grounds for reduction of penalty under section 112 of the Customs Act,1962. Penalty imposed is commensurate to the offence committed.

10. Revision application is allowed on above terms.

11. So, ordered.

( SEEMANARORA )

Principal Commissioner & ex-officio.

Additional Secretary to Government of India

ORDER No. 31 /2020-CUS (SZ) /ASRA/MUMBAI

DATED 21.04.2020

To,

1. Shri Bala Subramanian, S/o Givindraaj, No. 21/44, North Street, Pud Pattukkottai, Thanjavur.
2. The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.
3. M/s Aum Associates, Suite No. 25, First Floor, RR Complex, No. 1, Murthy Lane, Rattan Bazaar, Chennai - 600 003.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

**ATTESTED**

**B. LOKANATHA REDDY**  
Deputy Commissioner (R.A.)

