



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/241/B/14-RA | 309

Date of Issue 08/05/2018

ORDER NO. 273/2018-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 Iyudurai Shanmugamoorthy

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. 863/2014 dated 21.05.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Iyudurai Shanmugamoorthy against the order no C.Cus No. 863/2014 dated 21.05.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, a Sri Lankan National had arrived at the Chennai Airport on 12.09.2012. Examination of his person resulted in recovery of gold jewelry weighing 202 gms valued at Rs. 6,10,444/- (Six lacs Ten thousand Four hundred and Forty four). The gold jewelry was worn by the Applicant on his person.

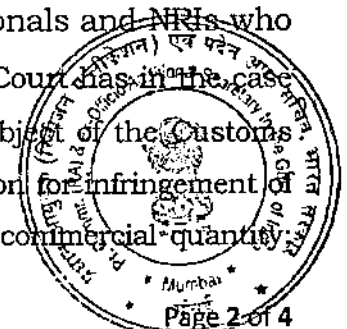
3. The original Adjudicating Authority vide his order 813/29.11.2013 confiscated the gold jewelry, but allowed redemption of the goods on payment of a redemption fine of Rs. 3,00,000/-. A Penalty of Rs. 60,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant.

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. 863/2014 dated 21.05.2014 rejected the Appeal.

5. The applicant has filed this Revision Application interalia 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 SCN states that he admitted that he was wearing gold in the form of chain and kappu; that as the jewelry was worn by the Applicant and the same was visible and he showed it to the officer therefore the question of declaration does not arise; It was personal jewelry and not brought for commercial sale; There is there is no specific allegation that the Applicant had passed through the Green Channel; He was at the red channel all along under the control of the officers;

5.2 The Applicant further pleaded that as 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; The Hon'ble Supreme Court 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; One gold chain and one Kappu cannot be commercial quantity;



the goods must prohibited before export or import simply because of non-declaration it cannot become prohibited; Even assuming without admitting that he had not declared the gold it was only a technical fault.

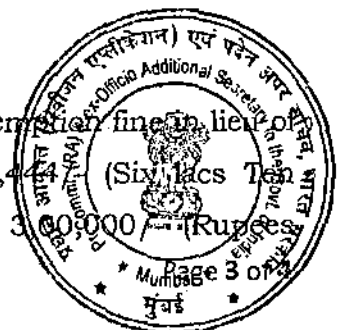
5.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing gold for re-export and prayed for reduction of redemption fine and reduction of personal penalty for re-export.

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. The Applicant is Sri Lankan 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. 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 chain and ring 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. Thus, mere non-submission of the declaration cannot be held against the Applicant, moreso because he is a foreigner. In view of the above facts, the Government is of the opinion that a lenient view 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 weighing 202 gms valued at Rs. 6,10,444 (Six lacs Ten thousand Four hundred and Forty four) is reduced from Rs. 3,00,000 (Rupees



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Three lacs) to Rs. 2,00,000/- (Rupees Two Lacs) 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. 60,000/- (Rupees Sixty thousand) to Rs. 40,000/- (Rupees Forty 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)
27.4.2018

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

ORDER No. ~~273~~ 2018-CUS (SZ) /ASRA/MUMBAI

DATED 27-04-2018

To,

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

True Copy Attested

(Signature)
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.

