



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/80/B/14-RA/311

Date of Issue 08.05.2018

ORDER NO. 275/2018-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 Nimal Ranjith Fernando

Respondent : Commissioner of Customs(Airport), Chennai.

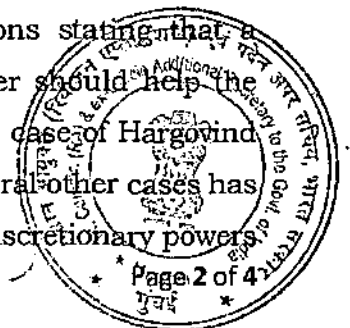
Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus No. 172/2014 dated 04.02.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Nimal Ranjith Fernando (herein after referred to as the Applicant) against the order no C. Cus No. 172/2014 dated 04.02.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, a Sri Lankan citizen arrived at the Chennai Airport on 14.12.2013 and was intercepted at the exit. Examination of his person resulted in the recovery of two gold chains jewelry totally weighing 105.4 gms valued at Rs. 2,61,344/- (Two Lacs Sixty one thousand three hundred and Forty four).
3. After due process of the law vide Order-In-Original No. 1458/2013 Batch C dated 14.12.2013 the Original Adjudicating Authority absolutely confiscated the gold jewelry under section 111 (d), (l), (m) and (o) of the Customs Act, 1962 read with section 3(3) Foreign Trade (D & R) Act, 1992. A penalty of Rs.30,000/- was also imposed 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) Chennai. The Commissioner of Customs (Appeals) Chennai, vide his Order in Appeal C.Cus No 172/2014 dated 04.02.2014 rejected the Appeal.
5. The applicant has filed this Revision Application interalia on the grounds that;
 - 5.1 the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; He was all along under the control of the officers at the Red channel and did not pass through the Green channel; he is the owner of the gold and it has not been brought for monetary purposes; He had declared orally that he was wearing the gold chains and had also voluntarily showed it to the officers, having seen the same the question of declaration does not arise; As he had declared orally the gold should have been released for re-export; The eligibility question does not arise for a foreigner.
 - 5.2 The Applicant further pleaded that The Hon'ble Supreme Court has 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; the 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 authorities should use the discretionary powers.



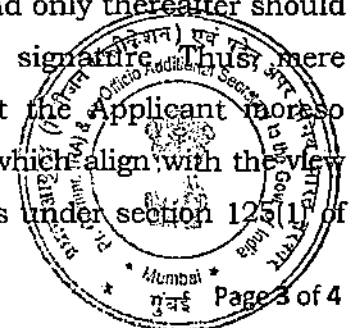
in a judicious and not an arbitrary manner; Section 125 of the Customs Act, 1962 states that even if confiscation of prohibited goods is authorized the Adjudication Authority may give it to the owner or to the person from whose possession such goods have been seized; As per the circular 394/71/97-CUS (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; Even assuming without admitting that he did not declare the gold it is only a technical fault; the imposition of Rs. 30,000/- penalty is high and unreasonable.

5.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing gold for redemption under section 125 of the Customs Act, 1962 and prayed for permission to re-export the gold on without payment or payment of nominal redemption fine and reduced personal penalty.

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 redemption for re-export of gold was allowed. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. The Applicant is a frequent traveller. It is a fact that the gold chain was 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. However, the facts of the case state that the gold is claimed by the Applicant and there is no other claimant. The evidences suggest that the Applicant is a repeat offender however the fact of the present case state that the gold chain was carried by the Applicant on his person and was kept in a cardboard cover, as such the jewelry was not ingeniously concealed. Government is of the opinion that this case should be decided on the basis of the evidences available in the present case. 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 more so because he is a foreigner. 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 absolute confiscation of the gold is therefore harsh and unjustified. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The Applicant has pleaded for re-export and the Government is inclined to accept the plea. The order of absolute confiscation of the gold in the impugned Order in Appeal therefore needs to be modified and the confiscated gold is liable to be allowed for re-export on payment of redemption fine and penalty.

8. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold bar for re-export in lieu of fine. The gold jewelry weighing 105.4 gms valued at Rs. 2,61,344/- (Two Lacs Sixty one thousand three hundred and Forty four) is ordered to be redeemed for re-export on payment of redemption fine of Rs 1,25,000/- (Rupees One lac Twenty Five thousand) 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. 30,000/- (Rupees Thirty thousand) to Rs. 25,000/- (Rupees Twenty Five thousand) under section 112(a) of the Customs Act,1962.

9. The impugned Order in Appeal stands modified to that extent. Revision application is partly allowed on above terms

10. So, ordered.

Ashok Kumar Mehta

27.5.2018

(ASHOK KUMAR MEHTA)

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

ORDER No 275/2018-CUS (SZ) /ASRA/MUMBAI

DATED 27.04.2018

To,

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

True Copy Attested

Sankar San Munda
8/5/18

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, Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

