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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. 373/26/B/14-RA / 2018

Date of Issue 08/05/2018.

ORDER NO. 278/2018-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 Ganesan

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. 1773/2013 dated 04.12.2013 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Ganesan against the order no C.Cus No. 1773/2013 dated 04.12.2013 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 03.03.2013. He was intercepted as he was attempting to exit through the Green Channel. Examination of his person resulted in recovery of gold jewelry weighing 63 gms valued at Rs. 1,81,019/- (One lac Eighty one thousand and Nineteen ). The gold jewelry was worn by the Applicant on his person.

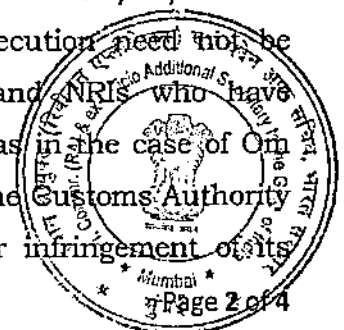
3. The Original Adjudicating Authority vide his order 259/10.03.2013 confiscated the gold jewelry, but allowed redemption of the goods for re-export on payment of a redemption fine of Rs. 91,000/-. A Penalty of Rs. 19,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant.

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. 1773/2013 dated 04.12.2013 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 gold seized is old and personal and was used for several months; The Superintendent makes no allegation that he was trying to exit the Green channel but the same is mentioned in the adjudication order; He was at the red channel all along under the control of the officers; Even assuming without admitting that wearing the gold was an offence it could have been released on payment of duty without redemption fine and penalty; 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;

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 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 eligibility question would not arise for a foreigner; Even assuming that he had not declared the gold it was only a technical fault.

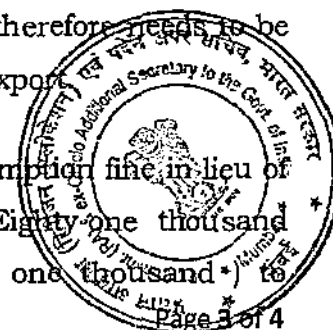
5.3 The Applicant further pleaded that as The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete, ~~The Revision Applicant cited various assorted judgments and~~ boards policies in support of re-export of the gold and prayed for reduction 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 Kappu 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. 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 63 gms valued at Rs. 1,81,019/- (One lac Eighty one thousand and Nineteen ) is reduced from Rs. 91,000/- (Rupees Ninety one thousand ) to



Rs.65,000/- (Rupees Sixty 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. 19,000/- (Rupees Nineteen thousand ) to Rs.13,000/- ( Rupees Thirteen 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)*  
27.4.18

(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,

True Copy Attested

Shri Ganesan

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

*(Signature)* 5.18  
SANKARSAN MUNDA  
Asstt. Commissioner of Customs & 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.

