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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No.373/248/B/14-RA/3059

Date of Issue 10.08.2020

ORDER NO. 18/2020-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 HowthNainar Mohamed

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.
587/2014 dated 03.04.2014 passed by the Commissioner
of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri HowthNainar Mohamed (herein after referred to as the Applicant) against the order in appeal Order-in-Appeal C.CUS No. 587/2014 dated 03.04.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the Applicant, arrived from Singapore on 28.09.2013 and was intercepted at the exit. Examination of his person led to the recovery of a pouch containing seven (7) gold chains weighing 104.7 grams totally valued at Rs. 2,88,570/- (Rupees Two lacs Eighty eight thousand Five hundred and Seventy).

3. The Original Adjudicating Authority vide Order-In-Original No. 1146/2013-Batch B dated 28.09.2013 ordered confiscation of the impugned gold under Section 111 (d) (l) (m) and (o) of the Customs Act,1962, but allowed redemption of the same on payment of redemption fine of Rs. 1,75,000/- (Rupees One lac Seventy Five thousand) and imposed penalty of Rs. 10,000/- (Rupees Ten 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. 587/2014 dated 03.04.2014 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 seven gold chains 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 12 months; There was no concealment of the gold; The said goods were shown to the authorities without hesitation or concealment; he had not attempted to import any of the goods in contravention of any rules and regulations; as he had declared the gold to the authorities under section 77 of the Customs Act,1962 he has



requested re-export as per section 80 of the Customs Act, 1962; 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; In a Writ petition filed by Shri T. Elavarasan before the Madras High Court it was ordered that the gold be released on fine and Customs duty, the gold was not declared by the passenger as per section 77 of the Customs Act, 1962; The impugned order in original itself states that the Applicant is not an habitual offender; There is calculation sheet for calculating the for the valuation and margin of profit; The redemption fine of Rs. 1,75,000/- and penalty of Rs. 10,000/- is arbitrary and unreasonable; 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 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 stayed abroad for 375 days and that the gold was not concealed.

7. The facts of the case reveal that the Applicant had brought gold jewelry weighing 104.7 grams totally valued at Rs. 2,88,570/-. He was intercepted at the exit, and no declaration was made as required under section 77 of the Customs Act, 1962. Even if the Applicant was an eligible passenger to import gold on concessional duty a formal declaration was necessary. The Government therefore concludes there confiscation of the gold was in order.

8. However, the gold was recovered from a pouch carried by the Applicant and therefore it was not ingeniously concealed. The order in original mentions that there is no known past history of such misdemeanors. Import of gold is restricted not prohibited. The ownership of the gold is not disputed. The



Applicant is an NRI working in Singapore and having worked abroad for 12 months is an eligible passenger to import gold on concessional customs duty and the quantity of gold under import is small. The Government also notes that the redemption fine of Rs. 1,75,000/- and penalty of Rs. 10,000/- on the gold valued at Rs. Rs. 2,88,570/- to be 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 Order of the Commissioner (Appeals) is modified as below. Re-export of the impugned gold is allowed. The redemption fine is reduced to Rs. 30,000/- (Rupees Thirty 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.

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

ORDER No. ²⁸ /2020-CUS (SZ) /ASRA/MUMBAI DATED 21.04.2020

To,

1. Shri Howth Nainar Mohamed, C/o Aliakbar, 14 A/26, Elumichai Oorani Street, Sivagangai 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, 234, O No. 217, Thambu Chetty Street, I & II Floor, Chennai 600 001.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

ATTESTED

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

