



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. 373/319/B/14-RA/CO\

Date of Issue 29/05/2018

ORDER NO. 282/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 02.05.2018 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 Sheriff Dawood Mohamed Fahim

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. 1094/2014 dated 25.06.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Sherrif Dawood Mohamed Fahim (herein after referred to as the Applicant) against the order no C. Cus No. 1094/2014 dated 25.06.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case is that the applicant, a Sri Lankan national, had arrived at the Chennai Airport on 20.03.2013. He was intercepted by the officers of the Air Intelligence unit as he was walking through the green channel without declaration. Examination of his baggage and person resulted in the recovery of 9 (Nine) gold bits concealed in the linings near the buckles of a "High Sierra" bag and one gold chain from the side of the said bag and 8 (eight) gold bits concealed in the linings near the buckles of a "Puma" bag. Totally 17 (seventeen) bits and one gold chain totally weighing 233.5 grams valued at Rs. 6,60,800/- ( Rupees Sixteen lacs Ten thousand Eight hundred and Sixty ) were seized from the Applicant.

3. The Original Adjudicating Authority vide Order-In-Original No. 158 dated 26.02.2014 ordered for absolute confiscation of the impugned gold under Section 111 (d), and (l) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs.70,000/- 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. 1094/2014 dated 25.06.2014 rejected the appeal of the applicant.

5. The applicant has filed this Revision Application interalia on the following grounds that;

5.1. The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The Applicant has made a claim for the gold which has not been acknowledged in the Order in Original; A claim was also made before the ACMM, Chennai along with retraction of his statement; The eligibility question does not arise for a foreigner; This the first offence of the Applicant and therefore he requests leniency and pardon; The Applicant was forced to write the Declaration card as per the instruction of the officers; The Applicant was wearing the gold chain at the time of interception; The gold bits were brought for making jewelry for his sister's marriage; Even assuming without admitting that the Applicant had not declared the gold it is only a technical fault.



5.2 The Applicant further submitted that the 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

5.3 The Revision Applicant cited various assorted judgments in support of re-export even when the gold was concealed and prayed for setting aside the impugned order and permission to re-export the gold on 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 re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed. Nobody from the department attended the personal hearing.

7. The Government has gone through the case records it is observed that the Applicant was given enough opportunities to declare the gold, he however did not declare the gold pieces at the time. The gold bits were ingeniously concealed in the lining of the two bags near the buckles. There is absolutely no doubt that the concealment was intelligently planned, so as to evade Customs duty and to smuggle gold into India. The aspect of allowing the gold for re-export can be considered when imports have been made in a legal manner. This is not a simple case of mis-declaration. In this case the Applicant has blatantly tried to smuggle the gold into India in contravention of the provisions of the Customs, 1962. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and that the Applicant had no intention of declaring the gold to the authorities and if he was not intercepted before the exit, the Applicant would have taken out the gold pieces without payment of customs duty.

8. Further, the Applicant being a foreigner is not eligible to import gold. The above acts have therefore rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed a penalty of Rs. 1,75,000/-. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.

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9. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C. Cus. No. 1094/2014 dated 25.06.2014 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

10. Revision Application is dismissed.

10. So, ordered.

*Ashok Kumar Mehta*  
2.5.18

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

ORDER No. ~~282~~ 2018-CUS (SZ) /ASRA/MUMBAI.

DATED 02.05.2018

To,

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

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.

True Copy Attested

*Sankarsan Miinda*  
SANKARSAN MIINDA  
Asstt. Commissioner of Customs & C. Ex.

