



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. 373/399/B/14-RA | *CS*

Date of Issue 29/05/2018

ORDER NO. 283/2018-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 Abdul Cader Shajath

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. 1657/2014 dated 08.09.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Abdul Cader Shajath (herein after referred to as the Applicant) against the order no C. Cus No. 1657/2014 dated 08.09.2014 passed by the Commissioner of Customs (Appeals), Chennai.

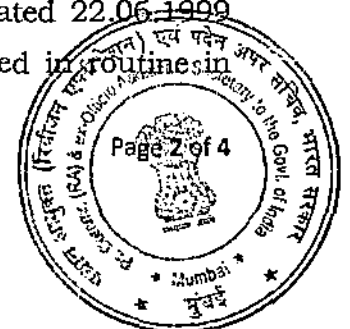
2. Briefly stated the facts of the case is that the applicant, a Sri Lankan national, had arrived at the Chennai Airport on 18.07.2013. He was intercepted by the officers of the Air Intelligence unit as he was walking through the green channel without declaration. Examination of his baggage resulted in the recovery of 8 pieces of broken cut gold chains one gold ring and two gold hooks totally weighing 218 gms valued at Rs. 5,84,676/- (Rupees Five lacs Eighty Four thousand Six hundred and Seventy six. These broken gold chains, ring and hooks were sewed and concealed in the edges of the clothes carried by the Applicant in his travel bag.

3. The Original Adjudicating Authority vide Order-In-Original No. 275 dated 23.04.2014 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. 60,000/- 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. 1657/2014 dated 08.09.2014 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 been wearing the gold chain and the same is old and used; That as he was wearing the gold chain the same is visible and therefore the question of declaration does not arise; he did not admittedly pass through the green channel, He was all along at the red channel under the control of the officers; 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.

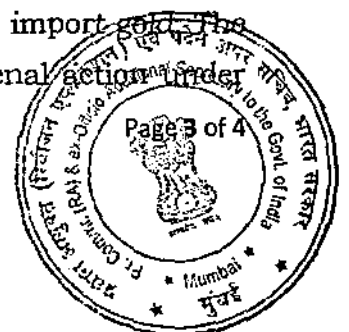
5.2 The Applicant further submitted that the being a foreigner he was not aware of the procedure; Even assuming without admitting that the Applicant had not declared the gold it is only a technical fault; A claim was also made before the ACMM, Chennai along with retraction of his statement; that goods must be prohibited before import or export simply because of non-declaration goods cannot become prohibited on import.

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 of interception. The gold bits, ring and hooks were ingeniously concealed in the lining of the clothes carried by the Applicant. There is absolutely no doubt that the concealment was intelligently planned so as to evade Customs duty and to smuggle the 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. 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.

9. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C. Cus. No. 1657/2014 dated 08.09.2014 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

10. Revision Application is dismissed.

11. So, ordered.

*Ashok Kumar Mehta*  
2/5/18

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

ORDER No. 283/2018-CUS (SZ) /ASRA/MUMBAI DATED 02.05.2018

To,

Shri Abdul Cader Shajath  
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 Munda*  
24/5/18  
SANKARSAN MUNDA  
Asstt. Commissioner of Custom & C. Ex.

