



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

F.No. 373/277/B/14-RA

Date of Issue 29/05/2018

ORDER NO. 286/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 03.05.2018 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 Packeer Mohideen Hajamohideen
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. 836/2014 dated 08.05.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Packeer Mohideen Hajamohideen (herein after referred to as the Applicant) against the order no C. Cus No. 836/2014 dated 08.05.2014 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 23.09.2012. He was intercepted as he was walking through the Green Channel. Examination of his person resulted in the recovery of assorted fourteen gold chains worn around his neck, totally weighing 305 grams valued at Rs. 9,08,290/- (Rupees Nine lacs Eight thousand and Two hundred and Ninety).

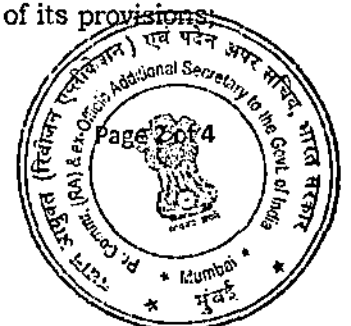
3. The Original Adjudicating Authority vide Order-In-Original No. 812 dated 29.11.2013 ordered for absolute confiscation of the impugned goods under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 1,00,000/- 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. 836/2014 dated 08.05.2014 rejected the appeal of the applicant.

5. The applicant has filed this revision application on the grounds that ;

5.1. That the order of the appellate authority is against law, weight of evidence and circumstances and probabilities of the case; He was not aware that it was an offence to bring in gold jewelry; The adjudication authority has simply glossed over the judgements and points raised in the representation; the gold jewelry has been purchased by him and belongs to his family; He was wearing the gold jewelry at the time of interception; The gold chain was worn and it was visible and hence the question of declaration does not arise; This is the first offence of the Applicant; Even assuming without admitting that the Applicant had not declared the gold it is only a technical fault; he did not admittedly pass through the green channel, He was all along at the red channel under the control of the officers;

5.2 The Applicant further pleaded that 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 stated that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions;



He was not aware of Indian law; Even assuming without admitting that he did not declare the gold it is only a technical fault.

5.3 The Revision Applicant cited various assorted judgments in support of re-export and prayed for permission to re-export the gold on payment of nominal redemption fine and reduced personal penalty.

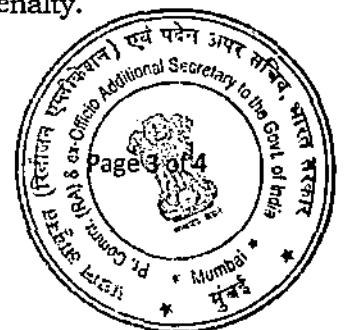
6. A personal hearing in the case was held on 07.03.2018, the Advocate for the respondent Shri Palanikumar re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. The Applicant is a foreign 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. It is a fact that the same were 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.

8. However, the facts of the case state that the Applicant was intercepted before he exited the Green Channel. The gold is claimed by the Applicant and there is no other claimant. The gold chains were worn by the Applicant and it was visible and not ingeniously concealed. There are no previous offences registered against the Applicant. 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 moreso because he is a foreigner.

9. 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.

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10. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold for re-export in lieu of fine. The gold chains weighing 305 grams valued at Rs. 9,08,290/- (Rupees Nine lacs Eight thousand and Two hundred and Ninety) is ordered to be redeemed for re-export on payment of redemption fine of Rs.3,25,000/- (Rupees Three Lakhs 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. 1,00,000/- (Rupees One lac) to Rs.65,000/- (Rupees Sixty Five thousand) under section 112(a) of the Customs Act,1962.

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

12. So, ordered.

Ashok Kumar Mehta
7.5.2018

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

ORDER No. 386/2018-CUS (SZ) /ASRA/MUMBAI,

DATED 03.05.2018

To,

Shri Packeer Mohideen Hajamohideen
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd 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
SANKARSAN MUNDA
Acnl. Commissioner of Custom & C. Ex.

