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SPEED POST

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

F.No. 373/148 /B/14-RA/1095

Date of Issue 07.02.2018

ORDER NO. 28/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 31.01.2018 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 Thavaraja Roobarjan

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 310-312/2014 dated 25.02.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri. Thavaraja Roobarjan (herein referred to as Applicant) against the order no 310-312/2014 dated 25.02.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, a Sri Lankan national, arrived at the Chennai Airport on 04.07.2013. On arrival the Applicant was intercepted at the exit point of the Airport by the officers of the Air Intelligence Unit, after clearing Immigration and Customs. He was brought back for examination and his personal search resulted in the recovery of two gold chains weighing 302 gms valued at Rs. 9,41,938/-. The Applicant was arrested and released on bail on 03.09.2012. After due process of the law the Assistant Commissioner of Customs, Airport vide Order-In-Original No. 696/2013 dated 07.10.2013 ordered 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. 90,000/- under Section 112 (a) of the Customs Act, 1962.
3. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus No. 310-312/2014 dated 25.02.2014 rejected the appeal of the applicant.

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

4.1. he does not know English and knows only Tamil.

4.2 he did not pass through the green channel. He was at the scan area at the arrival hall of Airport, when he was intercepted by the Customs officers and when asked, he informed the officers of the gold chains.

4.3. the seized gold chains were worn by him and not concealed in any manner. It was visible to the naked eye and therefore the question of declaration or misdeclaration does not arise.



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4.4 Being a foreign national he was not aware of the law, and also, therefore eligibility notification no. 03/2012 dated 16.01.2012 for import of gold on concessional rate does not apply to him. Further he never claimed that he is an eligible passenger.

4.5. Even assuming without admitting he had not declared the gold before the officers it is a technical fault and is pardonable. Secondly, CBEC Circular 09/2001 gives specific directions to the Customs officer that the declaration should not be blank, if not filled in by the passenger the officer will help them to fill the declaration card.

4.6 sections 111 (d) (l) (m) and (o) are not attracted as no offence was committed. Moreover the personal penalty imposed was very high and unreasonable.

4.7 the absolute confiscation of the gold was unreasonable and personal penalty imposed was high and unreasonable .

The Revision Applicant has cited various assorted judgments in support of his case, and prayed for permission to re-export the gold jewelry without payment of redemption fine and or reduce the personal penalty.

5. A personal hearing in the case was held on 04.12.2017, the Advocate for the respondent Shri Palanikumar requested for an adjournment due to a medical emergency. The personal hearing was rescheduled on 29.01.2018, which was attended by the Shri Palanikumar. The Advocate, re-iterated the submissions filed 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.

6. The Government has gone through the case records it is seen that the Applicant is a foreign national. However every tourist has to comply with the laws prevailing in the country visited. If a tourist is intercepted caught circumventing the law, the law of the land must take its course. It is a fact that the gold was not



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9. Taking into consideration the foregoing discussion, Government modifies the order of absolute confiscation of the impugned gold. Government allows redemption of the confiscated gold for re-export in lieu of fine. The confiscation of the gold jewelry totally weighing 302 gms, valued at Rs. 9,41,938/- (Rupees Nine lacs, forty one thousand and nine hundred and thirty eight) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 2,00,000/- (Rupees Two lacs) under section 125 of the Customs Act, 1962. Government also observes that facts of the case justify slight reduction in penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 90,000/- (Rupees Ninety thousand) to Rs.75,000/- (Rupees Seventy five thousand) under section 112(a) of the Customs Act,1962.

10. The impugned Order in Appeal 310-312/2014 dated 25.02.2014 is modified as detailed above. Revision Application is partly allowed.

11. So, ordered.

Ashok Kumar Mehta
31.1.18

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 28/2018-CUS (SZ) /ASRA/MUMBAI

DATED 31.01.2018

To,

Shri. Thavaraja Roobarjan
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai 600 001.

True Copy Attested

Sankar San Munda
31/1/18

SANKARSAN MUNDA
Asstt. Commissioner of Custom & 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.

