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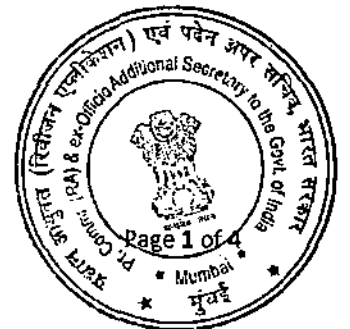
Date of Issue 29/05/2018

ORDER NO. 301/2018-CUS (SZ) / ASRA / MUMBAI DATED 25.05.2018
 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 John Susai

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-I
 No.181/2015 dated 20.04.2015 passed by the
 Commissioner of Customs (Appeals-I) Chennai.



ORDER

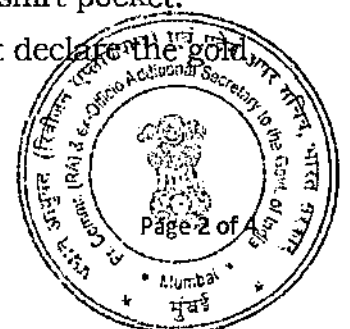
This revision application has been filed by Shri John Susai (herein after referred to as the Applicant) against the Order in Appeal no. C. Cus-I No.181/2015 dated 20.04.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stating the facts of the case that the applicant, arrived at the Chennai Airport on 25.12.2014 and was intercepted by the Customs Officers and on examination resulted in the recovery of one gold bit weighing 123 grams valued at Rs. 3,11,001/- (Three lakhs eleven thousand and one) which he had not declared to Customs. After due process of the law vide Order-In-Original No. 1556/2014 Batch B dated 24.12.2014, the Original Adjudicating Authority absolutely confiscated the seized gold bit (1 no.) weighing 123 grams valued at Rs. 3,11,001/- under section 111 (d), (e), (l), (m) & (o) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A Personal penalty of Rs. 32,000/- was also imposed under Section 112 (a) of the Customs Act, 1962.

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals-I) Chennai, vide his Order in Appeal C. Cus-I No.181/2015 dated 20.04.2015 rejected the Appeal.

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

- 4.1. The order of the appellate authority is bad in law, weight of evidence and probabilities of the case. The gold was not prohibited item and according to the liberalized policy the gold can be released on payment of redemption fine and applicable duty.
- 4.2. The gold was purchased out of his own earnings and brought for his daughter's marriage and the same was kept in his shirt pocket.
- 4.3. The only allegation against him was that he did not declare the gold.



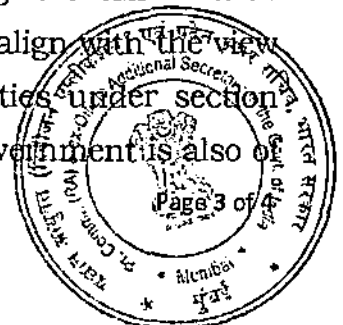
4.4 There was no specific allegation that he was passing through or cross the green channel. He was all along in the red channel and he was under the control of the customs officers. And he never enter the green channel.

4.5 The Revision Applicant also cited various assorted judgments in support of his case, and prayed for permission to re-export or release the gold and also reduce the personal penalty of Rs. 32,000.

5. A personal hearing in the case was held on 19.4.2018, the Advocate for the respondent Shri Palanikumar attended the hearing. He re-iterated the submissions filed in Revision Application and submitted that the revision application be decided on merits. Nobody from the department attended the personal hearing.

6. The Government has gone through the case records and it is seen that it is an undisputed fact that applicant had been intercepted by the Customs Officers where he failed to declare the gold in his possession and the examination of his person resulted in the recovery of 123 grams of Gold bits concealed on person. The Applicant has not declared the seized gold with the intent to evade the customs duty and in violation of provisions of the Customs Act, 1962.

7. However, the facts of the case state that the Applicant had not cleared the Green Channel exit. There was no ingenious concealment of the gold, and neither was there a concerted attempt at smuggling these goods into India. 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 more so because he is a foreigner. Considering all factors, absolute confiscation of the gold chain is harsh and disproportionate. 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 Government is also of



the opinion that a lenient view can be taken in the matter. The order of absolute confiscation of the gold bits in the impugned Order in Appeal therefore needs to be modified and the confiscated gold bits is liable to be allowed for re-export on payment of redemption fine and penalty.

8. Taking into consideration the foregoing discussion, the order of absolute confiscation of the impugned gold is modified. Government allows redemption of the confiscated gold for re-export in lieu of fine. The confiscation of the gold bits totally weighing 123 gms, valued at Rs. 3,11,001/- (Rupees Three lacs, eleven thousand and one) is ordered to be redeemed for re-export on redemption fine of Rs. 1,25,000/- (Rupees One lakh twenty five thousand only) under section 125 of the Customs Act, 1962. Government also observes that facts of the case justify reduction in penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs.32,000/- (Rupees Thirty two thousand) to Rs 25,000/- (Rupees twenty five thousand only) under section 112(a) of the Customs Act,1962.

9. The impugned Order in Appeal C.Cus-I No. 181/2015 dated 20.04.2015 is modified as detailed above.

10. So, ordered.

Ashok Kumar Mehta
25.5.2018

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

ORDER No.301/2018-CUS (SZ) /ASRA/MUMBAI DATED 25.05.2018

True Copy Attested

To, Shri John Susai,
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai - 600 001.

Sankarsan Munda
15/5/18

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-I), Custom House, Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

